

STATE OF MICHIGAN
IN THE SUPREME COURT

TAMMY McNEIL-MARKS,

Plaintiff/Appellee,

v.

MIDMICHIGAN MEDICAL
CENTER-GRATIOT,

Defendant/Appellant.

Supreme Court No. _____
Court of Appeals No. 326606
Circuit Court No. 2014-11876-NZ
Hon. Randy L. Tahvonen

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PLAINTIFF/APPELLEE'S ANSWER TO
THE APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

- I. WHETHER OR NOT THE COURT OF APPEALS PROPERLY APPLIED THE PLAIN LANGUAGE OF THE WHISTLEBLOWERS' PROTECTION ACT AND PROPERLY CONCLUDED THAT THE STATE BAR OF MICHIGAN IS A PUBLIC BODY AS DEFINED BY STATUTE.

The Plaintiff answers, yes.

The Court of Appeals would answer, yes.

The Defendant would answer, no.

- II. WHETHER OR NOT THE COURT OF APPEALS PROPERLY APPLIED THE PLAIN LANGUAGE OF THE WHISTLEBLOWERS' PROTECTION ACT AND CONCLUDED THAT ATTORNEYS ARE MEMBERS OF THE STATE BAR OF MICHIGAN AND, AS SUCH, PLAINTIFF'S REPORT TO THE ATTORNEY WAS A PROTECTED ACTIVITY.

The Plaintiff answers, yes.

The Court of Appeals would answer, yes.

The Defendant would answer, no.

- III. WHETHER OR NOT THE COURT OF APPEALS PROPERLY CONSIDERED THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF AND CONCLUDED THAT A QUESTION OF FACT EXISTED ON WHETHER PLAINTIFF REPORTED WHAT SHE BELIEVED WAS A VIOLATION OR A SUSPECTED VIOLATION OF THE LAW.

The Plaintiff answers, yes.

The Court of Appeals would answer, yes.

The Defendant would answer, no.

INTRODUCTION

Judge Kurtis T. Wilder authored a unanimous decision with Judges Joel P. Hoekstra and David H. Sawyer wherein the Court of Appeals applied the plain language of the Whistleblowers' Protection Act (WPA), specifically MCL 15.361(d)(iv), and properly concluded, based upon the facts and circumstances at issue in the present case, that making a report of suspected criminal activity to attorney Richard Gay was protected activity under the WPA. In issuing its ruling, the Court of Appeals properly viewed the facts in the light most favorable to the non-moving party, i.e. the Plaintiff.

As noted by Judge Wilder, Plaintiff's protected activities followed a stalking incident which occurred at her workplace. The Plaintiff, with the assistance of attorney Richard Gay, had previously obtained a personal protection order (PPO) against a stalker that had been threatening the Plaintiff. Among other things, the stalker was ordered to refrain from stalking the Plaintiff as that term was defined under MCL 750.411(h) and MCL 750.411(i), and it further specified that it was both effective when signed and enforceable immediately.

As also noted by Judge Wilder, the stalker's subsequent presence at Plaintiff's workplace, at a minimum, was sufficient for Plaintiff to reasonably believe that she was being stalked in violation of the PPO. Accordingly, the Plaintiff was justified in contacting the lawyer that was handling the ongoing PPO matter and report the suspected criminal violation to the attorney.

Utilizing the plain language of the WPA, the Court of Appeals then concluded that the Plaintiff engaged in a protected activity under the WPA by making her report to a

member of the State Bar of Michigan.

It is respectfully submitted that the mere fact that the Defendant does not believe that the intent of the legislature is not consistent with the plain language of the statute does not make the issues being raised by the Defendant jurisprudentially significant. Indeed, it is Plaintiff's position that the Defendant seeks to have this Court legislate from the bench which is improper. The Plaintiff requests that this Honorable Court deny Defendant's application.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

The Plaintiff brought a lawsuit alleging violations of the Whistleblowers' Protection Act (WPA) along with a violation of Michigan Public Policy. The Defendant subsequently filed a motion for summary disposition. At the conclusion of oral arguments the Circuit Court granted Defendant's motion for summary disposition as to all claims.

The Plaintiff filed a claim of appeal with the Court of Appeals. On June 16, 2016, the Court of Appeals reversed the Circuit Court's ruling with regards to Plaintiff's WPA cause of action. Finding that the WPA applied to Plaintiff's termination, the Court of Appeals affirmed the dismissal of Plaintiff's public policy cause of action.

The Defendant has now filed its application for leave to appeal with this Court. The Plaintiff submits this brief as her answer in opposition to the application.

The Plaintiff began working for Defendant on February 5, 2012 as the clinical manager of perioperative services. (**Exhibit 1 – Plaintiff Deposition at 65**). In 2006, two children of Plaintiff's second cousin, Sandi Freeze, were placed in Plaintiff's

custody. (Ex. 1 at 11-12). At that time, Plaintiff began the process of formally adopting the children. (Ex. 1 at 11-12). Plaintiff had also taken custody and subsequently adopted Sandi Freeze's third child, after the child's birth in 2008. (Ex. 1 at 12). After Plaintiff took custody of the children, the children's grandmother, Marcia Fields, began a horrific pattern of harassment, physical threats, and abuse towards Plaintiff. (Ex. 1 at 10-13, 16). Plaintiff explained that Ms. Fields suffers from several diagnoses of mental illness, including paranoid schizophrenia, multiple personality disorder, and manic depression, among others. (Ex. 1 at 15). Ms. Fields had gone so far as threatening the lives of Plaintiff and her biological and adopted children. (Ex. 1 at 14). Ms. Fields' vicious conduct eventually led Plaintiff to seek personal protection orders (hereinafter referred to as "PPO") from the Gratiot County Circuit Court. See (Ex. 1 at 10, 24). Plaintiff has had a PPO against Ms. Fields for the majority of at least the last five (5) years.

On January 14, 2013, the Honorable Michelle M. Rick entered an amended PPO *ex parte* against Ms. Fields. (Exhibit 2 – 01/14/13 PPO). The PPO specifically prohibited Ms. Fields from engaging in stalking as defined by MCL § 750.411(h) and MCL § 750.411(i), which includes, in part, the following:

- Following or appearing within sight of the petitioner;
- Appearing at the workplace of the petitioner;
- Approaching or confronting the petitioner in a public place or on private property; and
- Sending communications to the petitioner.

(Ex. 2). Notwithstanding the PPO, Ms. Fields continued to engage in stalking activities towards Plaintiff violating the terms of the PPO. (Ex. 1 at 23-34). Specifically in the fall of 2013, Ms. Fields had approached Plaintiff at Plaintiff's brother's funeral, sent various

threatening text messages, attempting to see the children, and repeatedly telephoned Plaintiff at odd hours of the night. (**Ex. 1 at 34-36**). Because the harassing conduct continued, Plaintiff, through her attorney, Richard D. Gay, filed a motion to extend the PPO on December 27, 2013. (**Exhibit 3 – 12/27/13 Motion**).

On January 13, 2014, Plaintiff entered a hallway at the hospital through the operating room door. (**Ex. 1 at 102-103**). After walking past a patient, the patient stated, “Hello, Tammy,” in a sing-song type voice as if the patient had “passed something over on you,” and Plaintiff realized that she had been contacted by Ms. Fields. (**Ex. 1 at 103-104**). Plaintiff immediately went into a break room, shaking. (**Ex. 1 at 105**). Plaintiff telephoned her supervisor, Theresa Baily, who was already aware of the PPO against Ms. Fields. (**Ex. 1 at 106**). Plaintiff reported that she had ran into Ms. Fields in the hallway, Ms. Fields recognized her and spoke to her, and now Plaintiff feared that Ms. Fields would be causing problems. (**Ex. 1 at 106**).

Later in the day, on January 13, 2014, Plaintiff returned a telephone call from her attorney, Mr. Gay. (**Ex. 1 at 112**). Mr. Gay informed Plaintiff that he was having trouble serving Ms. Fields and they proceeded to discuss what to do with the case. (**Ex. 1 at 112**). Plaintiff further discussed with Mr. Gay that at her brother’s funeral, Ms. Fields and her daughter had approached her about the case and stated that Ms. Fields was ill and going to require heart surgery. (**Ex. 1 at 113**). Plaintiff discussed with Mr. Gay dropping the PPO, because if Ms. Fields was actually sick, she may not be so much of a threat. (**Ex. 1 at 113**). However, Ms. Fields had previously feigned illness, on at least six (6) occasions, in attempts to make contact with Plaintiff and the children in the past. (**Ex. 1**

at 36). Plaintiff reported to Mr. Gay that Ms. Fields had shown up at her workplace and confronted her; Plaintiff did not in any fashion mention that Ms. Fields was a patient. (Ex. 1 at 113). Mr. Gay has also denied obtaining any information from Plaintiff that Ms. Fields was a patient in the hospital. (Exhibit 4 - Gay Deposition at 12). Plaintiff also asked Mr. Gay to hold off serving Ms. Fields. (Ex. 1 at 115).

Later in the evening, Mr. Gay's secretary, Deborah Brown, visited a patient at Defendant's hospital and believed that she saw Mr. Fields. (Ex. 1 at 115); (Ex. 4 at 11). At that time, Ms. Brown's boyfriend and Mr. Gay's process server, Lynn Beetley, was serving papers related on a different matter. (Ex. 4 at 11). Ms. Brown contacted Mr. Beetley to serve Ms. Fields at the hospital. (Ex. 4 at 11-12). Mr. Beetley proceeded to go to the hospital floor's front desk, identify himself, informed the front desk staff that he was there to serve Ms. Fields and requested the room number. (Ex. 4 at 11-12). Mr. Beetley then served Ms. Fields with the papers. (Ex. 4 at 11-12).

Following Ms. Fields being served with the court papers, Ms. Fields and her daughter, Judy Freeze, reported the incident to Defendant and its shift supervisor, T.J. Sirrine. See (Exhibit 5 – Whitman Deposition at 6, 8); (Exhibit 6 – 01/13/14 Email). The shift supervisor reported to Brenda Whitman, Director of Nursing, that there was a patient complaint and that the patient felt that Plaintiff had breached HIPAA in some way leading to the service of the papers at the hospital. (Ex. 5 at 7). Additionally, the shift supervisor sent Sue Broudbek, Defendant's Privacy Officer, and Ms. Whitman an email stating that Ms. Fields and her family were "upset with how [Plaintiff] found out what room the patient was in they are asking if it is a HIP[AA] violation." (Ex. 6).

Plaintiff first learned of the service court papers through a Facebook post authored by Judy Freeze. (**Ex. 1 at 100**). In the post, Ms. Freeze made various threatening statements towards Plaintiff and claimed that they were going to try to get Plaintiff fired. (**Ex. 1 at 100**). Having read Ms. Freeze's post, Plaintiff reported the potential risk management situation to Ms. Broudbek, who was out on sick leave, a voicemail. (**Ex. 1 at 100**). Plaintiff also reported that Ms. Fields and her family were trying to get Plaintiff fired and that she had a restraining order that was supposed to protect her from this type of threat. (**Ex. 1 at 100-101**).

Again because Ms. Broudbek was off work, Ms. Whitman began conducting an investigation into Ms. Fields' complaint. (**Ex. 5 at 7**). Plaintiff again reported to Ms. Whitman that she had a PPO against Ms. Fields and that Ms. Fields suffers from mental illness and had previously threatened her several times. (**Ex. 1 at 121**). Plaintiff also reported that Ms. Fields had approached her at work and violated the restraining order. (**Ex. 1 at 122**). Ms. Whitman recalled that Plaintiff described the confrontation in the hallway and expressed concern that Ms. Fields may now try to start trouble. (**Ex. 5 at 9**). Plaintiff had further revealed that she spoke with Mr. Gay and had also asked him to hold off on the PPO case. (**Ex. 5 at 9**).

Later in the day, Ms. Whitman also interviewed Ms. Fields. (**Ex. 5 at 7**); (**Ex. 1 at 121**). Judy Freeze had also made a written complaint. (**Exhibit 7 – Freeze Complaint**); (**Ex. 1 at 119**); (**Ex. 5 at 12**). The complaint falsely accused Plaintiff of obtaining information regarding Ms. Fields through hospital records and using that information to have Ms. Fields' served. (**Ex. 7**). Ms. Fields made the same false accusations to Ms.

Whitman, claiming that Plaintiff had somehow accessed Ms. Fields' records electronically. (Ex. 5 at 8). Lastly, Ms. Whitman spoke with Theresa Baily to discover what she knew of the situation; Ms. Baily indicated that Plaintiff had informed her that Plaintiff had contacted Mr. Gay. (Ex. 5 at 17). Ms. Whitman then passed the investigation off to Ms. Broudbek. (Ex. 5 at 18). When Ms. Broudbek returned, she conducted an audit of the electronic records, which indicated that Plaintiff had not accessed Ms. Fields' chart, as claimed by Ms. Fields and her family. (Exhibit 8 – Broudbek Deposition at 16).

On January 24, 2014, Plaintiff met with Ms. Whitman, Ms. Broudbek, and Lisa Killey of Human Resources. (Ex. 1 at 123); *see also* (Exhibit 9 – 01/24/14 Notes). Ms. Broudbek led the meeting asking Plaintiff a series of questions related to HIPAA and patient information. (Ex. 1 at 124); (Ex. 9). During the meeting, Plaintiff produced a Facebook post indicating that Ms. Fields was at Defendant's hospital dated January 12, 2014. (Ex. 8 at 48-49); (Ex. 9). Ms. Broudbek confirmed that such a post would waive Ms. Fields' privacy surrounding her protected health information. (Ex. 8 at 48-49). Plaintiff again reported what she had told Mr. Gay, including requesting that he hold off on serving anything related to the PPO case and explained that she was not sure how Ms. Fields ended up getting served other than a mix up in the office with the secretary. (Ex. 1 at 125).¹ Ms. Killey confirmed that Plaintiff discussed the fact that Mr. Gay's secretary had been a visitor in the hospital and noticed Ms. Fields was present, leading to the

¹ Plaintiff had spoken with Mr. Gay's secretary, Ms. Brown, where she learned how Ms. Fields ended up being served, after January 14, 2014, but prior to her meeting on January 24, 2014. (Ex. 1 at 116).

service of the court papers. (**Exhibit 10 – Killey Deposition at 20-21**); *see also* (**Ex. 8 at 25**). Ms. Whitman also confirmed that there was no change in Plaintiff's version of events. (**Ex. 5 at 23**). At no time did Plaintiff ever, in any meeting or investigation, state that she informed Mr. Gay that Ms. Fields was a patient in the hospital. (**Ex. 8 at 26**).

Plaintiff also provided information that she had an up-coming court date, where she would have contact with Ms. Fields. (**Ex. 1 at 145-146**). Plaintiff explained that the court hearing was about Ms. Fields violating the PPO. (**Ex. 1 at 145-146**). Ms. Broudbek responded, "Well, you can't talk to anybody and you can't tell anybody that you saw her here." (**Ex. 1 at 145-146**). Plaintiff asked, "If the judge asks me outright if I saw her, am [I] allowed to answer truthfully?" (**Ex. 1 at 142**). Ms. Broudbek responded that Plaintiff could not and that, if she did, it would be grounds for termination. (**Ex. 1 at 142**). Plaintiff specifically testified:

I was told by Sue Bro[u]dbek that if I even mentioned [] seeing [Ms. Fields] in the hallway at Gratiot court system, that that would be grounds for being fired.

(**Ex. 1 at 142**).²

Ms. Broudbek, who was tasked with determining whether Plaintiff's report that Ms. Fields approached her at the hospital was a violation of HIPAA and the hospital's privacy policies, admitted that she was unaware and that it was beyond her scope whether Plaintiff's report to her attorney fell within an exception to HIPAA. (**Ex. 8 at 20**). Ms.

² Plaintiff testified that at all times she intended to testify truthfully in court regarding the January 13, 2014 confrontation with Ms. Fields at the hearing regarding whether Ms. Fields violated the PPO; however, at the hearing, Ms. Fields voluntarily admitted to confronting Plaintiff at her workplace in violation of the PPO. (**Ex. 1 at 142-143**).

Broubeck also admitted that a person's presence inside a hospital, alone, does not constitute protected health information. (Ex. 1 at 22).³ Ms. Broubeck testified that she reached her conclusion that Plaintiff violated Ms. Fields' HIPAA rights, because Plaintiff informed Mr. Gay that Ms. Fields confronted her and Plaintiff had asked Mr. Gay not to serve papers. (Ex. 8 at 21-25). Ms. Broubeck further testified that she characterized as a "reasonable assumption" was based upon would depend upon the circumstances surrounding how Ms. Fields was served. (Ex. 8 at 23-24). However, Ms. Broubeck confirmed that she did not know all the circumstances of how Ms. Fields was served. (Ex. 8 at 24). Moreover, Defendant did not investigate how Ms. Fields actually was served by Mr. Gay's secretary and process server, even though Plaintiff had reported how Ms. Fields was served and that she played no role in the service. (Ex. 5 at 53). Furthermore, Ms. Broubeck claimed that there was an inconsistency between Plaintiff's versions of events (which is denied by Ms. Killey), Ms. Broubeck admitted that she did not actually know if there was any inconsistency. (Ex. 8 at 25).

Based on Ms. Broubeck's assumption that Plaintiff must have shared protected health information, Defendant proceeded to terminate Plaintiff's employment. On February 14, 2014, Plaintiff met with Ms. Whitman, Ms. Killey, and Ms. Baily. (Ex. 1 at 135); (Exhibit 11 – 02/14/14 Termination Notice). Plaintiff was provided with a

³ For instance, a person may be a visitor or on other business inside a hospital; a person being inside a building designated as a hospital does not necessarily mean that the person is a patient or describe any protected information by HIPAA. "Q. And if, let's say you know she says or the court reporter calls up her friend and says don't serve the PPO against Kevin it would be really embarrassing, I'm working right now. That's not protected health information just because I'm in the hospital, right? A. You're correct." (Ex. 8 at 22).

termination notice, stating that the reason for her termination was breach of confidentiality and violation of HIPAA privacy/practices. (Ex. 11). The notice specifically referenced Plaintiff's telephone conversation with Mr. Gay, her attorney, as the violation. (Ex. 11). Plaintiff responded to the notice by stating that she did not violate the policies or HIPAA, that she did not do anything accused of, did not access Ms. Fields' records, and did not have any information that Ms. Fields was even a patient. (Ex. 1 at 136). She further stated that the whole point of the PPO was to prevent Ms. Fields from causing this kind of harm to herself and her children. (Ex. 1 at 137).

COUNTER-ARGUMENT

I. RATHER THAN IMPROPERLY RE-WRITING THE WHISTLEBLOWERS' PROTECTION ACT TO ACHIEVE THE OUTCOME SOUGHT BY THE DEFENDANT, THE COURT OF APPEALS PROPERLY APPLIED THE PLAIN LANGUAGE OF THE WHISTLEBLOWERS' PROTECTION ACT AND CONCLUDED THAT THE STATE BAR OF MICHIGAN IS A PUBLIC BODY.

The WPA prohibits an employer from discriminating against an employee, because the employee reports or is about to report a violation of the law to a public body or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body or a court action:

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

MCL § 15.362.

To establish a *prima facie* case of retaliation under the Act, a plaintiff must show (1) that the plaintiff engaged in protected activity as defined by the Act; (2) that the plaintiff was discharged or discriminated against; and (3) a causal connection exists between the protected activity and the discharge or adverse employment action. *Shaw v Ecorse*, 283 Mich App 1, 8; 770 N.W.2d 31 (2009).

The Court of Appeals properly concluded that a question of fact existed as to whether Plaintiff engaged in protected activity by reporting Ms. Fields' violation of the PPO and stalking to her attorney, Mr. Gay a member of the State Bar of Michigan.

The Defendant first argues in its application that the State Bar of Michigan is not a public body. The WPA defines "public body" as including, "Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body." MCL § 15.361(d)(iv). There is no dispute that Mr. Gay is a member of the State Bar of Michigan. In establishing the State Bar of Michigan, the Legislature provided:

The state bar of Michigan is a **public body** corporate, the membership of which consists of all persons who are now and hereafter licensed to practice law in this state. The members of the state bar of Michigan are officers of the courts of this state, and have the exclusive right to designate themselves as "attorneys and counselors," or "attorneys at law," or "lawyers." No person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto. (Emphasis Added by Plaintiff).

MCL § 600.901.

Notwithstanding the plain language of the above-mentioned statute which clearly

and unequivocally states that the State Bar of Michigan is a “public body”, the Defendant invites this Court to ignore the plain language of MCL § 15.361(d)(iv) and MCL § 600.901 and re-write the WPA in such a manner so that the State Bar of Michigan is no longer a public body. Defendant’s request is improper since it is contrary to how this Court is to discern the meaning of the plain language of the statute:

The rules of statutory construction are well established. The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature. *Murphy v. Michigan Bell Telephone Co.*, 447 Mich. 93, 98, 523 N.W.2d 310 (1994). See also *Nation v. W. D. E. Electric Co.*, 454 Mich. 489, 494, 563 N.W.2d 233 (1997). This task begins by examining the language of the statute itself. **The words of a statute provide “the most reliable evidence of its intent...”** *United States v. Turkette*, 452 U.S. 576, 593, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981). **If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted.** *Tryc v. Michigan Veterans' Facility*, 451 Mich. 129, 135, 545 N.W.2d 642 (1996). Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. *Luttrell v. Dep't of Corrections*, 421 Mich. 93, 365 N.W.2d 74 (1984). (Emphasis Added by Plaintiff).

Sun Valley Foods Co. v. Ward, 460 Mich. 230, 236, 596 N.W.2d 119, 123 (1999).

The Defendant relies upon a 1960 decision from the Supreme Court wherein the word “agency” was referenced in its decision. See *State Bar of Michigan v. Lansing*, 361 Mich 185, 193; 105 NW2d 131 (1960). The Court should note that the issue before the Supreme Court in 1960 was limited to the following question:

This appeal involves the question as to the status of the plaintiff: Is it, as defendants seem to contend, actually a private organization made up of the members of the bar? Or is it, on the contrary, a governmental agency created for a specific purpose logically falling within the scope of the judiciary?

State Bar of Mich. v. City of Lansing, 361 Mich. 185, 193, 105 N.W.2d 131, 135 (1960).

It is respectfully submitted that Defendant has taken this Court's use of the word "agency" in its 1960 decision out of context. In other words, the Supreme Court was not faced with the question of whether or not the State Bar of Michigan was an agency rather than a public body or even if the terminology utilized mattered for the purpose of its decision. Rather, the issue before the Supreme Court was whether or not the State Bar of Michigan was a private organization subject to property tax on its real property or whether or not it was a governmental body and not subject to property tax. *State Bar of Mich. v. City of Lansing*, 361 Mich. 185, 105 N.W.2d 131 (1960). The Supreme Court ultimately concluded that the State Bar of Michigan is not a private organization for the purpose of property tax:

We affirm the trial court's finding that 'the property of the State Bar of Michigan located at the City of Lansing, which was dedicated on May 1, 1959, and which is described in the pleadings in this cause, is determined to be public property belonging to the State of Michigan and as such is exempt from taxation.'

State Bar of Mich. v. City of Lansing, 361 Mich. 185, 197–98, 105 N.W.2d 131, 137 (1960).

Accordingly the Supreme Court decision is of no consequence and the Plaintiff again states that the Court of Appeals properly concluded that the State Bar of Michigan is a public body based upon the plain language of the WPA:

Hence, under the plain language of the WPA, specifically MCL 15.361(d)(iv), Gay qualified as a member of a "public body" for WPA purposes. As a practicing attorney and member of the MBA, Gay was a member of a body "created by" state authority, which, through the

regulation of our Supreme Court, is also “primarily funded by or through” state authority.

McNeil-Marks v. Midmichigan Med. Ctr.-Gratiot, No. 326606, 2016 WL 3351621 (Mich. Ct. App. June 16, 2016) (**Exhibit 12 – Court of Appeals Opinion**).

Again, the conclusion reached by the Court of Appeals is not inconsistent with the decision in *State Bar of Mich. v. City of Lansing*, 361 Mich. 185, 105 N.W.2d 131 (1960), which only dealt with the question of whether or not the State Bar of Michigan was a private entity.

For the above-mentioned reason, Defendant’s application lacks merit and should be denied by this Court.

II. RATHER THAN IMPROPERLY RE-WRITING THE WHISTLEBLOWERS’ PROTECTION ACT TO ACHIEVE THE OUTCOME SOUGHT BY THE DEFENDANT, THE COURT OF APPEALS PROPERLY APPLIED THE PLAIN LANGUAGE OF THE WHISTLEBLOWERS’ PROTECTION ACT AND CONCLUDED THAT ATTORNEYS ARE MEMBERS OF THE STATE BAR OF MICHIGAN AND, AS SUCH, PLAINTIFF’S REPORT TO THE ATTORNEY WAS A PROTECTED ACTIVITY.

The Defendant next argues that this Court should re-write the statutes at issue so that attorneys are no longer members of the State Bar of Michigan for the purpose of the WPA. The Defendant argues that a contrary finding would be troubling. While the Plaintiff does not share Defendant’s purported concerns, whether or not a statute is unwise or bad policy is a question for the Legislature as explained by this Court on a number of occasions:

Moreover, arguments that a statute is unwise or results in bad policy should be addressed to the Legislature. *People v. Ramsey*, 422 Mich. 500, 375 N.W.2d 297 (1985).

People v. Kirby, 440 Mich. 485, 493–94, 487 N.W.2d 404, 408 (1992).

Again, the WPA includes members within the definition public body, “Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, **or any member or employee of that body.**” (Emphasis added by Plaintiff). MCL § 15.361(d)(iv).

The Court should again note the statute which describes the membership of the State Bar of Michigan and identifies licensed attorneys as its members:

The state bar of Michigan is a public body corporate, **the membership of which consists of all persons who are now and hereafter licensed to practice law in this state.** The **members** of the state bar of Michigan are officers of the courts of this state, and have the exclusive right to designate themselves as “attorneys and counselors,” or “attorneys at law,” or “lawyers.” No person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto. (Emphasis Added by Plaintiff).

MCL § 600.901.

Defendant’s request to have this Court reject the above-mentioned statutory language and find that attorneys are not members of the State Bar of Michigan for the purpose of the WPA is thus improper since it is contrary to how this Court to discern the meaning of the plain language of the statute:

The rules of statutory construction are well established. The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature. *Murphy v. Michigan Bell Telephone Co.*, 447 Mich. 93, 98, 523 N.W.2d 310 (1994). See also *Nation v. W. D. E. Electric Co.*, 454 Mich. 489, 494, 563 N.W.2d 233 (1997). This task begins by examining the language of the statute itself. **The words of a statute provide “the most reliable evidence of its intent....”** *United States v. Turkette*, 452 U.S. 576, 593, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981). **If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be**

enforced as written. No further judicial construction is required or permitted. *Tryc v. Michigan Veterans' Facility*, 451 Mich. 129, 135, 545 N.W.2d 642 (1996). Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. *Luttrell v. Dep't of Corrections*, 421 Mich. 93, 365 N.W.2d 74 (1984). (Emphasis Added by Plaintiff).

Sun Valley Foods Co. v. Ward, 460 Mich. 230, 236, 596 N.W.2d 119, 123 (1999).

In making its argument, the Defendant relies upon this Court's decision in *Breighner v. Mich. High Sch. Ath Ass'n*, 471 Mich 217; 683 NW2d 639 (2004). In *Breighner*, this Court addressed whether or not the Michigan High School Athletic Association was a public body as defined by the Freedom of Information Act rather than a private entity:

At issue in this case is whether defendant Michigan High School Athletic Association, Inc. (Mhsaa), a private, nonprofit entity that organizes and supervises interscholastic athletic events for its voluntary members, is a "public body" as that term is defined at MCL 15.232(d) of the Freedom of Information Act (Foia), MCL 15.231 *et seq.*

Breighner v. Michigan High Sch. Athletic Ass'n, Inc., 471 Mich. 217, 219, 683 N.W.2d 639, 641 (2004).

Unlike the Michigan High School Athletic Association which is a private non-profit entity, the State Bar of Michigan is a public body. See MCL § 600.901. Accordingly, *Breighner* is readily distinguishable since it dealt with a private non-profit entity. *Breighner v. Michigan High Sch. Athletic Ass'n, Inc.*, 471 Mich. 217, 219, 683 N.W.2d 639, 641 (2004). Furthermore, *Breighner* is distinguishable due to the fact that it involved the Freedom of Information Act rather than the WPA. *Breighner v. Mich. High Sch. Ath Ass'n*, 471 Mich 217; 683 NW2d 639 (2004). Finally, *Breighner* is

distinguishable in that it involved the term “agency” in the context of the Freedom of Information Act which is a term not at issue in the present case. *Breighner v. Mich. High Sch. Ath Ass’n*, 471 Mich 217; 683 NW2d 639 (2004).

Without any legal authority, the Defendant also argues in its application that communicating with an attorney should not be considered a report under the WPA due to the attorney-client privilege. The Defendant also argues without any authority that agency principles should preclude protection under the WPA. It is improper for this Court to re-write and judicially carve out an exception to a statutory provision, based upon the attorney client privilege, when such an exception does not exist based upon the plain language of the statutes at issue. *Sun Valley Foods Co. v. Ward*, 460 Mich. 230, 236, 596 N.W.2d 119, 123 (1999).

Accordingly, the Court of Appeals properly concluded that attorneys are members of the State Bar of Michigan based upon the plain language of the WPA:

Hence, under the plain language of the WPA, specifically MCL 15.361(d)(iv), Gay qualified as a member of a “public body” for WPA purposes. As a practicing attorney and member of the MBA, Gay was a member of a body “created by” state authority, which, through the regulation of our Supreme Court, is also “primarily funded by or through” state authority.

McNeil-Marks v. Midmichigan Med. Ctr.-Gratiot, No. 326606, 2016 WL 3351621 (Mich. Ct. App. June 16, 2016) (**Exhibit 12 – Court of Appeals Opinion**).

Finally, the Defendant argues that the Court of Appeals deviated from precedent set by the Court of Appeals. However, Defendant’s argument on this issue is without merit as well. Contrary to Defendant’s assertions, the Court of Appeals in *Henry*

concluded that being subpoenaed to testify was insufficient to constitute report to a public body since there was no evidence that the deponent had initiated the deposition:

In the case at bar, the subject of plaintiff's testimony in the Lessnau suit was defendants' violation of departmental regulations and, as previously indicated, we conclude that reporting such violations to a public body is a protected activity under the WPA. Even with a broad statutory construction, however, we fail to see how this testimony was a report to a public body. **Plaintiff took no initiative to communicate the violation to a public body**, i.e., he was not an initiator. Plaintiff was deposed in a private civil suit previously filed by a fellow officer. Under these facts we cannot conclude this testimony to have been a report to a public body for WPA purposes. (Emphasis Added by Plaintiff).

Henry v. City of Detroit, 234 Mich. App. 405, 411, 594 N.W.2d 107, 111 (1999).

Unlike the individual in *Henry*, the Plaintiff initiated the report to her attorney. As such, the decision in *Henry* supports the Plaintiff rather than the Defendant. See *Henry v. City of Detroit*, 234 Mich. App. 405, 594 N.W.2d 107 (1999).

Likewise, Defendant's reliance upon the *Nikkila* Court of Appeals decision is without merit. See *Kaufman & Payton, P.C. v. Nikkila*, 200 Mich. App. 250, 254, 503 N.W.2d 728, 731 (1993). In *Nikkila* the counter-plaintiff in that case did not argue that her communications with her attorney constituted protected activity under the WPA. See *Kaufman & Payton, P.C. v. Nikkila*, 200 Mich. App. 250, 254, 503 N.W.2d 728, 731 (1993). Instead, the issue before the Court of Appeals was whether *Nikkila* or somebody else on her behalf had reported to any other person, including her employer, the activities which she thought were unlawful before she resigned. *Kaufman & Payton, P.C. v. Nikkila*, 200 Mich. App. 250, 254, 503 N.W.2d 728, 731 (1993).

Unlike the individual in *Nikkila*, the Plaintiff initiated the report to her attorney and argued that the report was protected activity under the WPA. As such, the decision in *Henry* supports the Plaintiff rather than the Defendant. See *Kaufman & Payton, P.C. v. Nikkila*, 200 Mich. App. 250, 503 N.W.2d 728 (1993).

Finally, the Defendant cites to an unpublished Court of Appeals decision. As the Court is aware, an unpublished decision from the Court of Appeals is not binding precedent. See MCR 7.215 (C)(1). Furthermore, the unpublished Court of Appeals decision has not been cited or referenced in any subsequent appellate decisions.

For the above-mentioned reason, Defendant's application lacks merit and should be denied by this Court.

III. RATHER THAN IMPROPERLY WEIGH THE EVIDENCE IN FAVOR OF THE DEFENDANT, THE COURT OF APPEALS PROPERLY CONSIDERED THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF, AND CONCLUDED THAT A QUESTION OF FACT EXISTED ON WHETHER PLAINTIFF REPORTED A VIOLATION OR A SUSPECTED VIOLATION OF THE LAW.

The Court of Appeals in finding that the Plaintiff had engaged in protected activity, noted that the evidence, when viewed in the light most favorable to the Plaintiff raised, at a minimum, a question of fact as to whether Plaintiff acted in good faith in suspecting a violation of the law when informing the attorney:

It is true that, to constitute stalking, there must be a “*willful* course of conduct[.]” MCL 750.411h(1)(d) (emphasis added). But even if Fields's initial encounter with plaintiff in the hallway at MMCG was not willful, and was instead accidental, her subsequent verbal *communication* with plaintiff constituted willful, unconsented contact under MCL 750.411h(1)(e); it was “contact with [plaintiff] that [wa]s initiated or continued without [plaintiff's] consent or in disregard of [her] expressed desire that the contact be avoided or discontinued.” Plaintiff has been

granted a series of PPOs against Fields—on an ex parte basis—because Fields persists in contacting plaintiff against her wishes, and in such communications Fields has threatened the lives of both plaintiff and her children. Even if Fields could not have planned her contact with plaintiff or avoided such contact, after she saw plaintiff, Fields made a deliberate choice to speak to her, and such deliberation made the communication willful. Moreover, the record establishes that Fields did so in a decidedly willful tone—a tone indicating that she knew “she[had] gotten away with something she's not supposed to do.” Thus, viewing the evidence in the light most favorable to plaintiff, Fields's conduct, in concert with her prior unconsented contacts with plaintiff, qualified as “stalking” in violation of the PPO.

Furthermore, even assuming, for the sake of argument, that Fields's conduct did not *actually* violate the PPO, plaintiff is still afforded the protection of the WPA so long as she, in good faith, reported, or was about to report, Fields's conduct to a public body as a *suspected* violation of the PPO. See *Truel*, 291 Mich.App at 138 (“The first two types of activity are protected, ‘unless the employee knows that the report is false.’ MCL 15.362. In other words, reporting or being about to report violations or suspected violations is protected if the report is or is about to be made in good faith.”). There is no evidence that plaintiff acted in bad faith, i.e. that she did not actually believe that Fields's conduct violated the PPO. Hence, if plaintiff reported such conduct to a public body, or was about to do so, she was engaged in protected activity under the WPA.

McNeil-Marks v. Midmichigan Med. Ctr.-Gratiot, No. 326606, 2016 WL 3351621 (Mich. Ct. App. June 16, 2016) (**Exhibit 12 – Court of Appeals Opinion**).

The Court of Appeals correctly concluded that, at a minimum, a question of fact existed on whether or not Plaintiff acted in good faith in suspecting a violation of the law when informing the attorney.

For the above-mentioned reason, Defendant’s application lacks merit and should be denied by this Court.

RELIEF SOUGHT

For the reasons as set forth more fully above, the Plaintiff/Appellee respectfully requests that this Honorable Court deny Defendant's application for leave to appeal.

In the alternative, the Plaintiff requests that the Court accept the application so that the Plaintiff is afforded an opportunity to further set forth her position in opposition to Defendant's application.

Furthermore, the Plaintiff had raised additional grounds for reversal to the Court of Appeals which the Court of Appeals made no rulings upon in light of the fact that it had already concluded that a report to the attorney was sufficient to constitute a protected activity under the WPA. Likewise, the Court of Appeals affirmed the dismissal of the public policy cause of action in light of its decision that Plaintiff's activities were covered by and preempted by the WPA. A reversal of the Court of Appeals by this Court will necessitate further deliberations as to the additional grounds raised by the Plaintiff.

Respectfully Submitted,

THE MASTROMARCO FIRM

Dated: August 23, 2016

By: /s/Russell C. Babcock
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(989) 752-1414

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRATIOT

TAMMY McNEILL-MARKS,

Plaintiff,

vs.

Case No. 2014-11876-NZ

HON. RANDY L. TAHVONEN

MIDMICHIGAN MEDICAL
CENTER-GRATIOT,

Defendant.

The Deposition of TAMMY McNEILL-MARKS, taken before me, Jeffrey D. Stupak, RPR, CSR 8314, Notary Public, on Thursday, June 26, 2014, at The Mastromarco Firm, 1024 North Michigan Avenue, Saginaw, Michigan commencing at or about 10:04 a.m.

APPEARANCES:

KEVIN J. KELLY (P74546)
THE MASTROMARCO FIRM
1024 North Michigan Avenue
Saginaw, Michigan 48602

Appearing on Behalf of Plaintiff.

SARAH K. WILLEY (P57376)
MILLER JOHNSON
100 West Michigan Avenue, Suite 200
Kalamazoo, Michigan 49007

Appearing on Behalf of Defendant.

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- 1 A. No, ma'am.
- 2 Q. Remind me again when you became employed at MidMichigan?
- 3 A. July 14th, 1991.
- 4 Q. Had you ever worked as a nurse anywhere else other than
- 5 MidMichigan?
- 6 A. I worked as an LPN for Gratiot, which at that time was
- 7 not part of MidMichigan Health.
- 8 Q. Okay.
- 9 A. And I also worked as a nurse aide at Lakeview while I was
- 10 going to college for my nursing degree.
- 11 Q. Lakeview Hospital?
- 12 A. It's Kelsey Memorial, which is now part of some other
- 13 conglomerate.
- 14 Q. Of course. Okay. Have you ever been involved in a
- 15 lawsuit before?
- 16 A. Only the one we previously mentioned where I gave the
- 17 deposition.
- 18 Q. Okay. Now, I understand that you filed for a personal
- 19 protective order at some point; is that correct?
- 20 A. Yes.
- 21 Q. Was that related to any additional lawsuit?
- 22 A. No.
- 23 Q. When did you first file papers for a PPO?
- 24 A. Shortly after 2006 when I adopted the children.
- 25 Q. So of course I'm going to take several steps back --

1 A. Uh-huh.

2 Q. -- if that's okay.

3 When you say "adopted the children," what do
4 you mean by that? Can you give me the background?

5 A. I adopted my cousin's three children.

6 Q. And what were the circumstances that prompted you to do
7 that?

8 A. They were taken away from multiple homes by the
9 department of social services.

10 Q. How old were the children at that time that --

11 A. John and Lizzie I got in 2006, they were five-and-a-half
12 and four.

13 Q. John was five-and-a-half?

14 A. No. Lizzie was five-and-a-half, John was four.

15 Q. And when you say you got them, does that mean you
16 formally adopted them, or were you first a foster parent?

17 A. They were placed with me in 2006, and it took a year for
18 the adoption to be final.

19 Q. So that adoption was final in?

20 A. Sometime roughly 2007, I'd have to look at the paperwork,
21 I'm not sure on the exact date.

22 Q. And there was a third child as well?

23 A. Yes.

24 Q. Are these --

25 A. Actually, it probably was 2008 when the adoption was done

1 on -- on Lizzie and John, because he was born in 2008 and
2 the adoption was final right before -- right after I got
3 him.

4 Q. Okay.

5 A. In that time frame.

6 Q. Great. And by the way --

7 A. It refreshes my memory, I'm sorry.

8 Q. Yeah, I was going to say, and by the way, if at any time
9 a further question refreshes your memory and makes you
10 think that you need to correct something that you had
11 said prior, that's perfectly fine; okay?

12 A. (Indicating.)

13 Q. Okay. So what I have now is that John and Lizzie were
14 placed with you in 2006, and you think their adoption was
15 final sometime in 2008?

16 A. Correct.

17 Q. Now tell me about the third child?

18 A. The third child was born in 2008, and he was placed in my
19 care at two weeks of age.

20 Q. And what is his name?

21 A. It is now Sawyer.

22 Q. Was he given a different name at birth?

23 A. Yes.

24 Q. What was that name?

25 A. Oh, this is fun. James Kenneth Schlacht. Would you like

- 1 me to spell it? I've gotta have a pen. Excuse me just a
2 second. Pardon me. S-c-h-l-a-c-h-t.
- 3 Q. Schlacht was his last name, I assume?
- 4 A. Yes. James Schlacht, Kenneth Schlacht.
- 5 Q. And all three children, Sawyer, John and Lizzie, are
6 biological children of your same cousin?
- 7 A. Yes. They have three different fathers but same mother.
- 8 Q. Same mother, okay. And what is your cousin's name, the
9 biological mother of the children?
- 10 A. Sandi Lee Freeze.
- 11 Q. Sandi Lee, L-e-e?
- 12 A. Uh-huh.
- 13 Q. Can you spell Freeze?
- 14 A. F-r-e-e-z-e.
- 15 Q. Oh, just as it sounds, okay. Does she go by Sandi Lee or
16 Sandi?
- 17 A. Sandi.
- 18 Q. By the way, are you currently married?
- 19 A. No.
- 20 Q. Have you been?
- 21 A. Not -- no.
- 22 Q. Okay.
- 23 A. I mean in the past, yes.
- 24 Q. You have been --
- 25 A. Not currently, I've not been married.

1 Q. Okay. When were you last married?

2 A. 1994, and 1995 I received a divorce.

3 MR. KELLY: So you were married in '94 and
4 divorced in '95?

5 A. Correct.

6 BY MS. WILLEY:

7 Q. So I think that you testified that in 2006, you first
8 petitioned the court for a restraining order; is that
9 correct?

10 A. Sometime shortly after that. I'm not sure of the exact
11 date of the first one.

12 Q. And it was sometime shortly after Lizzie and John were
13 placed with you?

14 A. Yes.

15 Q. Explain to me why you petitioned the court for a
16 restraining order?

17 A. Marcia Fields suffers from mental illness, which I have
18 been aware of since I've known her, since I was a child.
19 My whole life. She is unstable and refuses to take her
20 medication, and she was threatening the life of both
21 myself and all of my biological and adopted children.

22 Q. Who is Martha Fields?

23 A. Marcia Fields.

24 Q. Marcia?

25 A. She is, by adoption, my first cousin.

1 Q. So let's see if I can get this straight. You adopted the
2 three biological children of your cousin who's Sandi
3 Freeze?

4 A. Correct.

5 Q. Okay. Another cousin is Marcia Fields?

6 A. Correct.

7 Q. Are Marcia Fields and Sandi Freeze related?

8 A. Marcia is the biological mother of Sandi.

9 Q. I'm just curious why you wouldn't call Marcia your aunt?

10 A. Because she's my first cousin.

11 Q. I see.

12 A. And Sandi is my second cousin.

13 Q. Sandi is your second cousin?

14 A. Yes.

15 Q. Got it.

16 You mentioned that Marcia Fields has mental
17 health issues. Do you know specifically what those are?

18 A. According to the department of social services and the
19 report they gave me, she suffers from paranoid
20 schizophrenia, multiple personality disorder, manic
21 depression... there's five, and I can never remember all
22 of them.

23 Q. Okay, let's see if we can --

24 A. Multiple personality disorder.

25 Q. Okay?

1 A. Did I say that?

2 Q. And paranoid schizophrenia?

3 A. Paranoid schizophrenia. Manic... bipolar depression.

4 Those are the ones I can remember. They gave me five.

5 Q. And you mentioned that those are in a report from who?

6 A. The department of social services, when I adopted the
7 children. Just wanted to make it clear that I did not

8 receive that from any medical information from her.

9 Q. From Marcia?

10 A. Right.

11 Q. Okay. So the department of social services provided you
12 this report?

13 A. Yes.

14 Q. And that was back in 2006?

15 A. It was back when the adoption was final in 2008.

16 Q. Do you still have a copy of that report?

17 A. I don't think that I've kept it, no.

18 Q. And you received that report actually after you first
19 petitioned for a PPO against Marcia Fields; correct?

20 A. No.

21 Q. Okay. I'm sorry, I thought you said you first petitioned
22 in 2006?

23 A. When you -- I said shortly after that, because she
24 started threatening me about the time I adopted the kids.

25 Q. Okay. So she first started threatening you around 2008?

1 Q. Okay. It says on December 2nd, 2012, Miss Fields became
2 verbally abusive and profane to you because she couldn't
3 take the children to Frankenmuth. Tell me about that?

4 A. Miss Fields can't seem to understand the fact that she
5 can't take the children from my home and have any kind of
6 unsupervised visitation. At one point she was taking her
7 medication and doing quite well, and I allowed her some
8 small supervised visitation, and she was unable to
9 continue in that way and has become abusive since.

10 Q. I see. Do you remember around the time frame that you
11 were allowing her to have visitation with the children?

12 A. It was right after my aunt died, her adoptive mother.
13 She seemed to do better right then and be on the right
14 track. It was a very brief time right in that period of
15 loss.

16 Q. So --

17 A. But I would have to look up the date. I don't remember
18 the date. I've had several relatives die recently, and
19 it's in that time frame.

20 Q. And when you say your adoptive aunt, you mean Mrs. Fields'
21 mom?

22 A. No, I mean Mrs. Fields' adoptive mother. Not her
23 biological mother. My aunt is her adoptive parent.

24 Q. Okay. Because Ms. Fields was adopted by your aunt?

25 A. Correct.

1 Q. So do the issues between yourself and Miss Fields seem to
2 arise with regard to her wanting to see the children and
3 you telling her no?

4 A. No.

5 Q. Okay. Tell me... help me understand the issues with her
6 and the relationship?

7 A. Mrs. Fields suffers from mental illness, so any time that
8 she doesn't feel that she's getting what she wants she is
9 abusive. And it's not related to any one event, and it
10 is always worse during the holidays, her mental illness
11 is always worse starting in November.

12 Q. Oh, that's interesting.

13 A. When it's close to the holidays.

14 Q. How often do you see her, if at all?

15 A. Rarely. I try not to. And especially with a personal
16 protective order, I should not be seeing her, yet she
17 continues to violate the personal protective orders.

18 Q. Okay, let's take a step back for a minute. You said she
19 becomes abusive when she does not get what she wants.
20 What are examples of things that she wanted from you and
21 you had to tell her no?

22 A. Anything. She wanted pictures of my family because she
23 was going to make a quilt, and I'm like, no. Thank you,
24 but no. I mean just odd requests.

25 Q. I see. So it could be wanting to see the children, or it

1 could just be wanting pictures from you.

2 A. Yeah.

3 Q. Okay. Generally those things arise -- well, strike that.

4 Other than her being a patient at Gratiot,
5 which we're going to talk about --

6 A. Uh-huh.

7 Q. -- soon, in January of 2014, did those issues ever arise
8 in the workplace? Her wanting something from you as it
9 relates to your job?

10 A. Not as it relates to my job. But she harassed me when I
11 worked in Midland and my workplace there also.

12 Q. When was that?

13 A. Right around the 2006 to 2010, right in that time frame
14 before I came to Gratiot, she was calling the OR desk
15 there and asking for me, because she found out I worked
16 there. And so she would make repeated phone calls to me
17 at work, which was not where I could receive phone calls,
18 and it was upsetting my bosses.

19 Q. Was that during -- was that in a time frame during which
20 you had a PPO against her, if you remember?

21 A. I think that's one of the reasons that prompted me to get
22 the first PPO.

23 Q. So you think that was occurring likely before you got the
24 first PPO?

25 A. Yes.

1 under No. 5; you had mentioned that before?

2 A. Yes.

3 Q. Do you have any memory -- well, strike that.

4 Do you see that Exhibit 4 says "amended" in
5 writing above that personal protective order, at the top
6 middle of the page?

7 A. No. Where do you see that?

8 Q. Right here?

9 A. Oh, somebody's handwrote that.

10 Q. Yes. Do you see that it's handwritten in? "Amended"?

11 A. It's handwritten in, yes.

12 Q. Do you have any recollection as to the events that
13 transpired between No. 3, Exhibit No. 3 and Exhibit
14 No. 4?

15 A. It's a very broad question. Could you narrow that down
16 quite a bit?

17 Q. Sure. Do you know why, do you have any recollection as
18 to why the PPO was amended so that all the boxes were
19 checked in January of 2013?

20 A. Possibly because Mrs. Fields had violated the restraining
21 order multiple times, and I had notified the court system
22 of that.

23 Q. Are you sure about that, or are you guessing?

24 A. No, she had violated it.

25 Q. Okay.

1 A. And I have notified my attorney.

2 Q. So between January 2013 -- strike that.

3 Between December 19, 2012; and January 14,
4 2013, she violated the PPO?

5 A. Yes.

6 Q. Okay. How did she violate the PPO?

7 A. She continued to contact me. I'd have to look at the
8 dates, but she attended my nephew's funeral and she
9 attended my brother's funeral and harassed me at both of
10 those events -- well, I take that back. I apologize.
11 She did not speak to me, but her presence was enough of a
12 harassment at my nephew's funeral. And two weeks later
13 at my brother's funeral, she did approach me and try to
14 talk to me, and it was very upsetting.

15 Q. Anything else you can think of in that time frame
16 that's --

17 A. Those are the two biggest ones, I'm sorry. She's
18 continually called my relatives, she's called my phone.
19 Between that time she had called my phone, my cell phone
20 repeatedly, usually around 2:00 a.m., that's usually when
21 you expect to get calls from people, correct? When
22 you're trying to sleep? I would call that harassment at
23 that time of day, just to be calling me at that time of
24 day.

25 Q. So she called your cell phone repeatedly?

1 A. Uh-huh.

2 Q. Including in the middle of the night; correct?

3 A. Yes.

4 Q. She attended your nephew's funeral; correct?

5 A. Yes.

6 Q. She attended your brother's funeral and there she tried
7 to talk to you?

8 A. Yes.

9 Q. Okay. Anything else in that time frame that you can
10 remember she did to violate the PPO?

11 A. She had sent me messages of... text messages, attempting
12 to try to see the kids. Claiming that her health was
13 very poor, and she needed to see them before she died
14 again. This was a common occurrence for her to have
15 these near-death experience where she would want to make
16 amends to everybody. The doctor has told her six times
17 now that she's dying, and she's done the same stunt six
18 times.

19 Q. Anything else?

20 A. I'm sure there's more, but I can't recall all of it
21 because there's just so much of it.

22 Q. Okay. When she engaged in those actions that you
23 believed violated the PPO?

24 A. Uh-huh.

25 Q. What did you do?

1 where they provide things like a pain clinic on Tuesdays,
2 they do outpatient services like outpatient IV therapy,
3 blood transfusions as an outpatient.

4 Q. Uh-huh?

5 A. And they have an endoscopy and colonoscopy suite where
6 they provide those kinds of services as well.

7 Q. All outpatient?

8 A. All outpatient.

9 Q. Okay. Do you know whether others applied for that
10 managerial role?

11 A. I wasn't told.

12 Q. Handing you what's been marked as No. 9, have you ever
13 seen this document before?

14 (Exhibit No. 9 marked.)

15 A. No, I haven't.

16 Q. Would you agree that you were offered the position of
17 clinical manager of perioperative services and ambulatory
18 care?

19 A. Yes.

20 Q. Would you agree that you started in that role on or about
21 February 5th, 2012?

22 A. Yes.

23 Q. I'm handing you what's been marked as Exhibit 10. If you
24 would just take a moment to review that, I would
25 appreciate it.

- 1 A. It states in the document, Mrs. Fields.
- 2 Q. Oh, sorry. Your cousin, Marcia Fields?
- 3 A. Yes, I assume it would be Marcia.
- 4 Q. And it refers to Tammy in this document as well. Do you
5 understand that to be yourself?
- 6 A. It refers to me later in the document as Tammy
7 McNeill-Marks, so yes.
- 8 Q. Now you mentioned that you found out at some point that
9 Mrs. Fields was served with a PPO. When did you find
10 that out?
- 11 A. The first time I found out was when Judy Freeze, her
12 daughter, posted on Facebook a whole bunch of slanderous
13 comments and quotes, and my niece copied the Facebook
14 page, I'm not on her Facebook either, and sent it to me
15 and told me, do you know what's going on, what they're
16 saying about you, and that they're claiming they're going
17 to get you fired? So it would have been sometime that
18 evening, I believe, later. Late evening.
- 19 Q. Of the 14th?
- 20 A. Possibly the 14th, if that's the day that she was served.
- 21 Q. What did you do after you learned that they were trying
22 to get you fired? Did you call someone at MidMichigan?
- 23 A. The next day I called Sue Broadbeck, the risk manager, to
24 let her know that there was a risk management situation
25 and that they were threatening me as an employee of

1 MidMichigan Health, and that they were trying to get me
2 fired, and that I had a restraining order that was
3 supposed to be protecting me from these kinds of
4 incidences.

5 Q. And at that point of time, did you understand that Ms.
6 Fields had been served with the PPO that you had gotten
7 entered against her?

8 A. I wasn't sure what it was that she was served with, if it
9 was the PPO or if it was... what papers it was, until her
10 grandson Devin Jackson came to my home and returned them
11 to me, the exact copies that she had been given in the
12 hospital.

13 Q. When was that?

14 A. I filed a police report. I don't have the exact date.
15 There was so many things going on all at the same time
16 and in such a short period of time, I don't know the
17 exact date. But I did call the police immediately and
18 file a police report with Alma PD.

19 Q. You filed a police report because Devin Jackson came to
20 your home?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. Yes.

24 Q. Sorry.

25 A. Sorry. Yes.

- 1 Q. We're getting tired, so we've gotta say yes and no.
- 2 A. I'm sorry. Yes.
- 3 Q. So let's back up? On the 13th of January, you
- 4 encountered Miss Fields at MidMichigan Gratiot; correct?
- 5 A. Yes.
- 6 Q. Do you have any knowledge as to how Ms. Fields arrived at
- 7 MidMichigan Gratiot?
- 8 A. No. I knew that she was in the hospital, my niece had
- 9 tried to tell me, again from Judy's Facebook, that she
- 10 was in the hospital. I told her I really didn't want to
- 11 know, I don't want to have contact with her, you know,
- 12 please. And then she later printed it out for me so I'd
- 13 have a record of it.
- 14 Q. When was later?
- 15 A. When she printed out the one on the night that Judy said
- 16 she was going to get me fired. She sent me all three of
- 17 them, previous ones that she had called and talked to me
- 18 about.
- 19 Q. Facebook postings?
- 20 A. Yes.
- 21 Q. Go back to the 13th. You encountered Marcia Fields at
- 22 MidMichigan Gratiot; correct?
- 23 A. Yes.
- 24 Q. In a hallway --
- 25 A. Yes.

- 1 Q. -- correct? Okay. You were walking down the hallway?
- 2 A. I came out of the operating room door where it says,
3 posted, "don't enter beyond this point," in my full blue
4 OR scrubs, I really... I said "Hello" because you're
5 trained to always speak to people. I didn't even realize
6 who she was or who the transporter was that was
7 transporting her. I got three steps down the hallway and
8 she said, "Hello, Tammy," in one of those little voices
9 she does, and my stomach sank.
- 10 Q. She was being transported, in the sense that she was not
11 walking herself?
- 12 A. Correct. She was in a wheelchair. Someone --
- 13 Q. Was she in a wheelchair or a cart, if you know?
- 14 A. A wheelchair.
- 15 Q. Do you know what area of the hospital she had been
16 admitted into?
- 17 A. No, I do not. Nor did I at that time.
- 18 Q. Did you understand that she was inpatient?
- 19 A. No, I did not.
- 20 Q. You didn't know, or you understood something different
21 than that?
- 22 A. No, I had no way of knowing where she had come from in
23 the hospital. Those transporters transport from ER, the
24 tower, all outpatient services, she could have come from
25 anywhere and be going anywhere.

1 Q. And the two of you passed?

2 A. Yes.

3 Q. After you had passed, she said, "Hello, Tammy"?

4 A. Yes.

5 Q. In whatever voice you had described?

6 A. A little sing-songy voice she has when she feels she has
7 passed something over on you like a little kid. It's
8 very specific.

9 Q. Were any other words exchanged?

10 A. No. I immediately went into another door.

11 Q. Do you have any reason to think that she somehow planned
12 that encounter with you, meaning she knew that you were
13 going to be coming down the hallway in the moment that
14 she was getting wheeled to a procedure?

15 MR. KELLY: Objection to foundation. You can
16 answer.

17 MS. WILLEY: You can answer.

18 A. I believe on more than one occasion she has admitted
19 herself in the hospital with the hopes that she could
20 re... make contact with me, yes.

21 BY MS. WILLEY:

22 Q. Well, I'm talking about with regard to this particular
23 encounter, and then if you want we can expand on that;
24 okay?

25 A. Okay.

1 Q. So with this particular encounter, the two of you passed
2 each other in the hallway.

3 A. I don't believe that... that anybody could necessarily --
4 that wouldn't be a reasonable expectation, that she could
5 plan to pass me in the hallway.

6 Q. After that encounter in the hallway, did you see her
7 again at Gratiot?

8 A. No, I did not.

9 Q. What did you do next?

10 A. I walked into the break room, I was shaking, and Alice
11 Haverbush asked me what was the matter.

12 Q. Who is Alice Haverbush?

13 A. She is a registered nurse that works in the operating
14 room.

15 Q. What did you tell her?

16 A. That someone I had a restraining order against had just
17 seen me in the hallway, and now that she was more clear
18 about where I worked in the hospital I was sure that she
19 would be causing me problems.

20 Q. Did Marcia Fields know that you worked at MidMichigan
21 Gratiot in general?

22 A. Yes.

23 Q. But not exactly where in the hospital?

24 A. I...

25 Q. If you know?

1 A. I think that she confused the emergency room with the
2 operating room, a lot of people confuse ER, OR, and I
3 think that... I mean she knew I worked in the operating
4 room in Midland. I don't know what she had knowledge of
5 at Gratiot.

6 Q. I see. So you told Alice that you were upset because
7 someone against whom you had a PPO knew where you worked?

8 A. Yes.

9 Q. Okay.

10 A. Now she knew specifically where in the hospital, what
11 door to find me at.

12 Q. Anything else with regard to your exchange with Alice?

13 A. No. She was under me, I kept it brief, I really
14 shouldn't have said that much to her, but I was very
15 visibly upset and shaking, and she could tell that.

16 Q. What happened next?

17 A. I called Theresa Bailey on her portable phone and
18 reported the event to her.

19 Q. What did you tell Theresa Bailey, as best as you can
20 remember exactly, what did you tell her?

21 A. That I had ran into her in the hallway, she had
22 recognized me, she spoke to me, and that now that she
23 knew where I was at, that she would be causing problems.
24 She already knew that I had a restraining order against
25 her.

1 January?

2 A. Yes, later in the afternoon. I'd been -- I go into work
3 at six o'clock in the morning, I was very busy, I was
4 going to take care of it when I got out of work.

5 Q. And you did indeed call him after you got out of work?

6 A. I'm not sure on what time of day it was that I called
7 him, because I was very upset that day.

8 Q. And when you called him, you were able to get ahold of
9 him?

10 A. Yes.

11 Q. Did he tell you why he had requested that you call him?

12 A. He was having problems serving her, and that he wondered
13 what I still wanted to do with the case.

14 Q. And by "her," you mean Marcia Fields?

15 A. Marcia Fields, yes.

16 Q. Why did he ask, if you know, what you wanted to do with
17 the case? Was he wondering if you wanted to drop it?

18 A. It had been there had been a gap and we hadn't gotten
19 together since I had went into his office upset that that
20 had not been out into the LEIN system, so that it had not
21 been taken care of right away.

22 Q. Back in November?

23 A. Yes.

24 Q. Okay?

25 A. Yes.

1 Q. So you hadn't spoken to him since November of 2013?

2 A. No, I believe I called the office several times and
3 talked to the --

4 Q. Okay.

5 A. -- secretary.

6 Q. When he asked you what you wanted to do with the case,
7 what was your response?

8 A. That when I had been at the funeral, they had asked me
9 about the case and that she was supposedly, and those are
10 the terms I used, "supposedly," according to her
11 daughter, really, really ill and going to require heart
12 surgery, and maybe if we dropped it she wouldn't have
13 been so much of a threat, but then she showed up today at
14 my workplace. I did not tell him that she was there in
15 any form as a patient or anything, all I said was that
16 she showed up at my workplace today again, you know. But
17 we discussed dropping it, or at least waiting until
18 her -- we saw if this was a true health issue and she was
19 truly dying, and then it would be a moot point if she was
20 passed on.

21 Q. The funeral you were talking about, was that the
22 brother's funeral that you were talking about?

23 A. That was my brother's funeral, yes.

24 Q. Okay. So you told him that you talked to members of your
25 family at your brother's funeral?

1 A. No, I didn't say that. I said not to serve her at all
2 because she was so ill, maybe we should just hold off on
3 this and see if it's a moot point, that she's going to
4 pass on if she's as ill as she says she is.

5 Q. Oh, I see. Okay. Then you understand that at some point
6 thereafter she did get served?

7 A. Within 24 hours, yes.

8 Q. Do you know how that came to be? How was it that
9 somebody knew where she was and served her with the PPO?

10 A. The secretary of Richard Gay has apologized to me, her
11 and her boyfriend, who is the process server for Mr. Gay's
12 office, were up in intensive care, she saw Marcia, she
13 recognized Marcia, she knew they had an outstanding paper
14 to serve on her. They went back to the office, she
15 unlocked the office, got the paperwork for her boyfriend,
16 and they went back up to the intensive care unit where
17 they had been visiting someone else and saw Marcia and
18 served it on Marcia, not knowing about the conversation I
19 had had with Mr. Gay

20 Q. So this secretary and her boyfriend served Marcia Fields
21 without telling Mr. Gay either?

22 A. It was the late evening, I guess, and they had went up
23 there and they knew they had an outstanding one, and when
24 they saw her they just said, hey, we're in town, we see
25 her here, let's get it done. That's kind of the gist of

1 what she said to me. I don't know if that's the fact or
2 not. I have only heard that secondhand.

3 Q. What is the secretary's name?

4 A. I don't know her name. Just she's the only one that
5 answers the phone when I call there.

6 Q. Is she still the secretary at Mr. Gay's?

7 A. To my knowledge, yes.

8 Q. Do you know her boyfriend's name?

9 A. I've never heard his name spoken.

10 Q. When did the secretary first tell you that story?

11 A. When I called to find out what happened, that she'd
12 gotten served and I was getting disciplined for her being
13 served at work, I called to talk to Mr. Gay, and that's
14 when she apologized to me.

15 Q. Was that before or after your employment ended?

16 A. Before my employment ended. It was before the meeting I
17 had with Sue Broadbeck and Lisa Killey.

18 Q. Why didn't you tell Sue Broadbeck --

19 A. I did tell Sue Broadbeck that.

20 Q. You told her that whole story about the secretary and her
21 boyfriend going --

22 A. Yes, I did.

23 Q. Sorry. You've got to let me finish --

24 A. She called me a liar.

25 Q. You've got to let me finish my question, or he's going to

1 Q. -- at this time?

2 A. No.

3 Q. Okay. Have you ever seen this document before? Sorry.

4 For the record, we're looking at Exhibit 22.

5 (Exhibit No. 22 marked.)

6 A. Only this morning when I was shown it by Mr. Kelly.

7 MR. KELLY: Don't testify to what I talked --
8 showed you or talked to you about.

9 A. Sorry.

10 BY MS. WILLEY:

11 Q. Judy Freeze says in this statement that her mom was
12 served a PPO by one of the hospital's employees, Tammy
13 McNeill-Marks. Based on your previous testimony, I
14 assume you disagree that you were the one who served the
15 PPO; correct?

16 A. I was --

17 MR. KELLY: Let me just place a -- can I have
18 continuing objection to the hearsay nature of the
19 document?

20 MS. WILLEY: Sure.

21 MR. KELLY: You can go ahead and answer.

22 MS. WILLEY: Go ahead.

23 A. I was not present when the PPO was served.

24 BY MS. WILLEY:

25 Q. Do you have any idea why Judy Freeze concluded that you

1 A. I believe Brenda Whittemore was advised of it and called
2 me to her office to talk to me before she went up and
3 talked to the family.

4 Q. Was that sometime around the 14th of January?

5 A. 14th or 15th.

6 Q. Okay.

7 A. Or somewhere, some date after that.

8 Q. What did you tell Brenda Whittemore?

9 A. That I had a personal protective order against her. That
10 she suffers from mental illness. That she had threatened
11 me on multiple times. That she should not be a patient
12 in the hospital because of the personal protective order
13 prevented her from being in my workplace, and that she
14 had done this on multiple times, tried to cause issues
15 for me, and that the restraining order had been in place
16 for many years.

17 Q. Did you tell her that your lawyer asked you whether he
18 could serve the PPO on her when she was at the hospital?

19 A. We didn't discuss Mr. Gay at all in that meeting.

20 Q. Okay. Did you talk about the fact that the patient was
21 served while in the hospital?

22 A. She called me into the office because of that.

23 Q. For that reason?

24 A. Yeah.

25 Q. Okay. Did she ask you how it was that somebody knew the

1 patient was there?

2 A. Yes.

3 Q. Okay. And what explanation did you give her, if any?

4 A. I did not tell him that she was a patient in the
5 hospital. I told him that she had approached me at work
6 and I had reported the violation of the restraining
7 order, but that I had not provided any other information
8 to him.

9 Q. When you talked to Richard Gay about encountering her in
10 the hospital --

11 A. Uh-huh.

12 Q. -- did you describe that she was in a wheelchair?

13 A. No.

14 Q. Did you describe the encounter at all to him?

15 A. Just that she was in the hallway, I came out of the
16 doorway and she said hi to me.

17 Q. Did your attorney ask whether she was threatening?

18 A. Well, I said the same thing I've said every time, in that
19 sing-songy voice and makes it sound like, "Hello, Tammy,"
20 like she just got -- the cat that just ate the canary.
21 She knows she's gotten away with something she's not
22 supposed to do.

23 Q. Okay, what else about your conversation with Brenda
24 Whittemore, if anything, have we missed?

25 A. Just that I don't think she understood the... the concept

- 1 of the restraining order.
- 2 Q. Why do you say that?
- 3 A. Because she seemed more at a loss of what to do. She's a
4 very new manager, and I think she was very much at a loss
5 of what to do, how to handle it. Sue Broadbeck was out
6 with a cold, pneumonia, some upper respiratory thing, and
7 she wasn't sure how to handle it without Sue being there.
- 8 Q. Okay. So Brenda went and talked to the patient; correct?
9 If you know?
- 10 A. I...
- 11 Q. Okay.
- 12 A. I'm assuming so. I don't know that for a fact.
- 13 Q. What happened next?
- 14 A. Nothing, for a long period of time.
- 15 Q. So you talked to Theresa, you left the voicemail message
16 for Sue Broadbeck, you talked to Brenda, and then a
17 period of time passed?
- 18 A. Yes.
- 19 Q. Correct? Okay. After that period of time passed, what
20 happened? Was there a meeting?
- 21 A. There was a meeting with... when Sue Broadbeck came back,
22 there was a meeting with Sue Broadbeck and Lisa Killey.
- 23 Q. Only you, Sue and Lisa were there, if you remember?
- 24 A. That's I think how I remember it.
- 25 Q. Was Brenda there, possibly?

1 A. I don't remember Brenda or Theresa being there. I only
2 remember Sue and Lisa Killey being there. They may have
3 been there, but I don't recall them speaking if they
4 were. I don't recall their presence.

5 Q. Okay. When was that meeting scheduled? I mean at what
6 point did you know there was going to be another meeting
7 about this?

8 A. About an hour before they -- I went down there and they
9 called me and asked if I could meet them, I believe. It
10 was very short notice.

11 Q. Did they ask you about HIPAA and what would be considered
12 patient information?

13 A. Yes.

14 Q. And what did you respond, if you remember?

15 A. Same answers I've given today.

16 Q. What is that?

17 A. Exactly as I did today. They asked me for an instance
18 where it would be -- just as you did earlier on the
19 record, for an instance of where it would be okay to give
20 out patient information; if there was, you know,
21 instances where it was not; and to give examples of
22 those. And I stated the same example I gave to today,
23 about my niece having a baby, she tells me to tell Aunt
24 Carolyn; I now have her permission, it's, you know, not
25 where I work, it would be okay to do that because she's

1 asked me to do it, kind of a thing. I knew it from
2 outside of here. Somebody told me, then it's okay to go
3 up and visit uncle -- my uncle was in the floor upstairs,
4 dying. I didn't go visit him until somebody from outside
5 of work told me because I was not to know that he was a
6 patient there. So I didn't go see him until someone
7 from -- my sister called me, told me, "Hey, Uncle John's
8 upstairs," then I went up and saw him.

9 Q. Okay.

10 A. That kind of a thing.

11 Q. And did they ask you about your phone call to Richard Gay
12 on January 13th?

13 A. No.

14 Q. You didn't talk about that at all?

15 A. No, they just asked... they were really more concerned
16 with how she got served, is what I remember the
17 conversation.

18 Q. Do you remember telling them that you had returned a call
19 to him on the 13th?

20 A. I did tell them that I had asked him not to serve her so
21 I was not sure how she got served, other than there was a
22 mix-up in the office with the secretary, but I had not
23 told them -- him that she was even a patient there, I had
24 not accessed the bed board, which is an electronic way of
25 seeing what a patient was in the office -- in the

1 MidMichigan?

2 A. Not that I can recall.

3 Q. Handing you what's been marked as Exhibit 24, you've seen

4 that document before; correct?

5 (Exhibit No. 24 marked.)

6 A. Yes, I have.

7 Q. Was this provided to you in person?

8 A. Yes, it was.

9 Q. Who was present?

10 A. Brenda Whittemore and Theresa Bailey and Lisa Killey.

11 Q. Were you at work?

12 A. Yes, I was.

13 Q. Do you see in handwriting it says, "Tammy did not access

14 electronic medical record"?

15 A. Yes, I do.

16 Q. Is that something you asked to be placed in this

17 document?

18 A. Yes, I did.

19 Q. And it looks like there's a BW next to it. Did Brenda

20 write that for you?

21 A. Brenda did write that for me.

22 Q. Did they read this document to you when you met with

23 them?

24 A. Yes, they did, they asked me to read it over and asked if

25 I had any questions.

1 Q. And did you have any questions other than the access to
2 the electronic medical record?

3 A. I think I was mostly stunned. I don't remember asking
4 questions pertaining to this. More, questions pertaining
5 to benefits and things like that.

6 Q. Okay. And you asked them to include the information
7 making clear that you didn't actually access her
8 electronic --

9 A. Correct.

10 Q. -- her EMR; correct?

11 A. Correct.

12 Q. Do you need a minute?

13 A. No, I'm good.

14 Q. Okay.

15 Did you talk specifically about any... any
16 other content in the description regarding the reason for
17 your discharge?

18 A. I believe that I did not violate -- I stated once again
19 that I did not violate it.

20 Q. Did not violate what?

21 A. Anything they were accusing me of. That I had no access
22 to her record, I did not get onto the hospital bed board
23 and look up where her... she was placed, or that she --
24 to even see if she was even a patient. I had no access
25 to any of her records.

1 Q. Do you remember telling them anything else?

2 A. No.

3 Q. Any other reasons why you thought that this decision was
4 wrong?

5 A. I don't recall right now today, no. I believe I did
6 discuss -- I take that back. I believe I did discuss
7 that that was the whole point of the restraining order,
8 and I again stated that I had a restraining order, in
9 order for her to be prevented from causing this kind of
10 harm to myself and my children.

11 MS. WILLEY: What exhibit was that?

12 THE COURT REPORTER: That was No. 24.

13 BY MS. WILLEY:

14 Q. Did you appeal your discipline under MidMichigan's appeal
15 procedures?

16 A. I was not offered the right to appeal.

17 Q. And what -- I'm sorry I'm going backward, but that
18 counseling you had received in the fall of 2013, we
19 talked about that, the corrective action for job
20 performance, did you appeal that at all?

21 A. No. I just excelled at my job.

22 Q. Have you received unemployment benefits?

23 A. No.

24 Q. What efforts have you made to obtain work since your
25 termination?

1 Q. Mr. Gay. I assume then you did not instruct him to go
2 file a motion in court because you had seen her in the
3 hallway either?

4 A. No. It was because the... the motion that was put in in
5 court was because of the phone calls.

6 Q. Okay.

7 A. I was told by Sue Broadbeck that if I even mentioned the
8 seeing her in the hallway at Gratiot court [sic] system,
9 that that would be grounds for being fired. And at that
10 time I was still currently employed at MidMichigan
11 Health.

12 Q. And did Sue tell you why that would be grounds for being
13 fired?

14 A. Because she believed that was a HIPAA violation.

15 Q. Because that would be disclosing the name of a patient, I
16 assume? Is that what her theory --

17 A. She didn't say why.

18 Q. Okay?

19 A. She just said that even if the judge -- I said, "If the
20 judge asks me outright if I saw her, am allowed to answer
21 truthfully?" And she said no, that I am not allowed to
22 answer that, or it would be grounds for termination.

23 MS. WILLEY: We're getting close.

24 THE WITNESS: Okay.

25 A. I would have mentioned in court that she violated that,

1 but it never came to that because she confessed to
2 everything to the -- at that last hearing, last two
3 hearings, she confessed to everything. I didn't have to
4 testify.

5 Q. She shared that information herself?

6 A. She shared it herself. Threw it right out there and
7 confessed to everything. I didn't have to.

8 Q. Paragraph 12 of your complaint says on or about
9 January 13, 2014, plaintiff, that's you, contacted her
10 attorney, Richard Gay, to inform him that Miss Fields was
11 continuing to violate the personal protection order?

12 A. Uh-huh.

13 Q. By being present at her workplace; is that accurate?

14 MS. WILLEY: Here let's, just mark it in. I'll
15 give you a copy, it's not fair for me to read it to you.

16 (Exhibit No. 25 marked.)

17 BY MS. WILLEY:

18 Q. So I was reading paragraph 12.

19 A. That's fair to say. She did violate that by coming to my
20 workplace.

21 Q. And that you told her lawyer that she was violating it by
22 being present at your workplace?

23 A. No, I told my lawyer.

24 Q. I'm sorry. You told your lawyer that you believed she
25 was violating the PPO because she was pregnant -- because

1 she was present at your workplace?

2 THE WITNESS: Do you need a break?

3 MS. WILLEY: Yes. Okay.

4 BY MS. WILLEY:

5 Q. Yes?

6 A. I told my agent of the court that I was -- that happens
7 to be Mr. Gay, who was acting on my behalf, that she had
8 violated it once again by coming to my workplace and
9 speaking to me in the hallway.

10 Q. And in paragraph 13 it says you made such a report to
11 your attorney so as to file a petition with the court to
12 hold her in contempt of the PPO. Based on the testimony
13 you just gave, it sounds to me like you don't agree with
14 that paragraph?

15 A. No, I had already done that. It was already in place.

16 Q. So then paragraph 13 is referring to that earlier motion
17 that had to do with the phone calls and text messages, et
18 cetera?

19 A. Yes.

20 Q. I see. Not the fact that she was present in your
21 workplace; correct?

22 A. No, but that would certainly come out in court.

23 Q. That's not what you told your lawyer that day, that
24 wasn't the intent of calling your lawyer that day?

25 A. My intent was to return his phone call, one; and, two, to

1 tell her that she had violated the personal protective
2 order one more time.

3 MS. WILLEY: I don't have any further
4 questions.

5 MR. KELLY: I just have a couple. Very
6 briefly.

7 EXAMINATION

8 BY MR. KELLY:

9 Q. You had just testified that you had had some type of
10 conversation with Susan Broadbeck about testifying in
11 court?

12 A. Yes.

13 Q. Do you recall that? What... can you give me the entire,
14 what your recollection was of that conversation?

15 A. She called me in to tell me that they were unsure about
16 this matter, that there was the complaint against me,
17 that they were investigating it, and that they were
18 taking it very seriously and they would be talking with
19 Mark SantaMaria and discussing what kinds of actions
20 would have to be taken because of Marcia's complaint.

21 Q. Okay, well how did the subject of you talking about --

22 A. I --

23 Q. -- the Ms. Fields being in the workplace come up?

24 A. She's the risk... Sue is the risk management person. I
25 felt, as part of risk management, I needed her to know

1 that there was an upcoming court date and that I would
2 have contact with Marcia at that court date. And when
3 she asked about, you know, what it was about, I told her.
4 And then I had -- and she's like, well, you can't talk to
5 anybody and you can't tell anybody that you saw her here.
6 And I said, what the if judge asked me? I mean she, or
7 he or she, the judge, may very well ask me did I see her
8 there, you know, because it could come up. She may
9 confess -- like she did, she confessed to it right off
10 the bat, so then it's out there. What do I do then, once
11 it's out there? Can I say something? Can I honestly
12 answer? And she said, No, if you answer those questions
13 you will be fired.

14 Q. Did you have any plans, if it was necessary to testify
15 about Ms. Fields approaching you at the worksite in the
16 court?

17 A. I planned to be very honest in court with the judge, if
18 I'm sworn in under oath, I plan on talking to the judge
19 and answering any questions, and if it was asked of me I
20 was going to answer honestly. That yes, she had
21 approached me, that she's continued to violate the
22 restraining order and that she's violated it both through
23 the phone, through texting and through personal contact.

24 Q. Okay. Now the motion at the hearing was over... that was
25 to hold Miss Fields in contempt of court?

Approved, SCAG

STATE OF MICHIGAN
29th JUDICIAL CIRCUIT
GRATIOT COUNTYOriginal - Court
1st copy - Law enforcement agency (file) (green)
2nd copy - Respondent (blue)
AMENDED
PERSONAL PROTECTION ORDER
(NONDOMESTIC)
☒ EX PARTE3rd copy - Petitioner (pink)
4th copy - Return (yellow)
5th copy - Return (goldened)
CASE NO.
12-1929-PPCourt address: 214 E. CENTER ST., P.O. BOX 437, ITHACA, MI 48847
ORI
MI.Court telephone no.
(989) 875-5224(A) Petitioner's name
TAMMY M. McNBILL-MARKSAddress and telephone no. where court can reach petitioner
933 W. CENTER ST., ALMA, MI 48801Respondent's name, address, and telephone no.
MARCIA A. FIELDSAddress and telephone no. where court can reach respondent
4220 N. MISSION, APT. 118, ROSEBUSH, MI 48878(B) Full name of respondent (type or print)
MARCIA A. FIELDS

Height 5'2"	Weight 140 LBS	Race CAUCASION	Sex F	Date of birth or age 65	Hair color	Eye color	Other identifying information	Driver's license number (if known)
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These items must be filed in for the police/sheriff to enter on LEIN; the other items are not required but are helpful.

Date: _____ Judge: _____

1. This order is entered ☒ without a hearing, ☐ after hearing. Bar no.

THE COURT FINDS:

- ☒ 2. A petition requesting an order to restrain conduct prohibited under MCL 750.411h and MCL 750.411i and/or MCL 750.411s has been filed under the authority of MCL 600.2950a.
- ☒ 3. Petitioner requested an ex parte order, which should be entered without notice because irreparable injury, loss, or damage will result from delay required to give notice or notice itself will precipitate adverse action before an order can be issued.
4. Respondent committed the following acts of willful, unconsented contact: (State the reasons for issuance.)

IT IS ORDERED:

5. MARCIA A. FIELDS

Full name of respondent

- ☒ a. stalking as defined under MCL 750.411h and MCL 750.411i, which includes but is not limited to
- ☒ following or appearing within sight of the petitioner.
 - ☒ appearing at the workplace or the residence of the petitioner.
 - ☒ approaching or confronting the petitioner in a public place or on private property.
 - ☒ entering onto or remaining on property owned, leased, or occupied by the petitioner.
 - ☒ sending mail or other communications to the petitioner.
 - ☒ contacting the petitioner by telephone.
 - ☒ placing an object on or delivering an object to property owned, leased, or occupied by the petitioner.
 - ☒ threatening to kill or physically injure the petitioner.
 - ☒ purchasing or possessing a firearm.
 - ☒ other: **NO CONTACT WITH PETITIONER'S CHILDREN**

- ☒ b. posting a message through the use of any medium of communication, including the Internet or a computer or any electronic medium, pursuant to MCL 750.411e.

6. Violation of this order subjects the respondent to immediate arrest and to the civil and criminal contempt powers of the court. If found guilty, respondent shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.

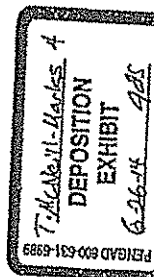
7. This order is effective when signed, enforceable immediately, and remains in effect until 12/31/2013. This order is enforceable anywhere in this state by any law enforcement agency when signed by a judge, and upon service, may also be enforced by another state, an Indian tribe, or a territory of the United States. If respondent violates this order in a jurisdiction other than this state, respondent is subject to enforcement and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.

8. The court clerk shall file this order with **GRATIOT COUNTY SHERIFF** who will enter it into the LEIN.
9. Respondent may file a motion to modify or terminate this order. For ex parte orders, the motion must be filed within 14 days after being served with or receiving actual notice of the order. Forms and instructions are available from the clerk of court.
10. A motion to extend the order must be filed 3 days before the expiration date in item 7, or a new petition must be filed.

Date and time issued: 1/14/2013

CC 380 (3/12) PERSONAL PROTECTION ORDER (NONDOMESTIC)

MCL 600.2950a, MCR 3.705, M

PLAINTIFF'S
EXHIBITFILED
JAN 14 2013Paul J. Marks
GRATIOT COUNTY CLERK

STATE OF MICHIGAN
IN THE 29th JUDICIAL CIRCUIT COURT FOR THE COUNTY OF GRATIOT

TAMMY M. McNEILL-MARKS,
Petitioner,

File No: 12-1929-PP

vs.

Hon. Michelle M. Rick

MARCIA A. FIELDS,
Respondent.

RICHARD D. GAY (P13886)
Attorney for Plaintiff

FILED

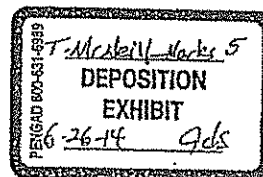
DEC 27 2013

Carol D. Henshaw
GRATIOT COUNTY CLERK

MOTION TO EXTEND PERSONAL PROTECTION ORDER

NOW COMES Tammy M. McNeill-Marks, by and through her Attorney, RICHARD D. GAY, and in support of Motion to Extend Personal Protection Order says unto this Honorable Court as follows:

1. That a Personal Protection Order was entered by this Honorable Court on January 14, 2013.
 2. That this Order is set to expire on December 31, 2013.
 3. That respondent was served with a copy of this Order on January 18, 2013.
 4. That Marcia A. Fields has violated this PPO by sending Tammy McNeill-Marks text messages of a threatening nature to on November 2, 2013 and November 19, 2013.
 5. That Petitioner incorporates by reference the allegations contained in the original Petition and Exhibit A dated December 18, 2012. Said allegations remain in effect.
- (Copy of original Petition is attached to this Motion)

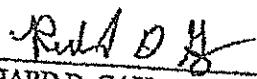


6. That Petitioner is requesting that the Personal Protection Order dated December 18, 2013 be extended for an additional year. The terms contained in this Order remain necessary.

WHEREFORE, Petitioner prays that her Petition prays that her Petition be granted.

Respectfully submitted,

DATED: Dec 19 2013


RICHARD D. GAY (P-13886)
Attorney for Petitioner
P.O. Box 215
Alma, MI 48801
(989) 463-3888

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRATIOT

TAMMY MCNEILL-MARKS,
Plaintiff,

Civil Action

-VS-

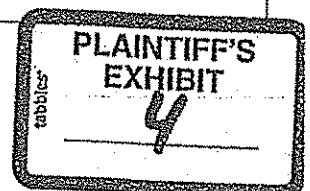
No. 2014-11876-NZ

Hon. Randy L Tahvonen

MIDMICHIGAN MEDICAL
CENTER-GRATIOT,
Defendant.

PAGE 1 TO 24

The Deposition of RICHARD D. GAY,
Taken at 330 N. State Street,
Alma, Michigan,
Commencing at 10:00 a.m.,
Friday, September 5, 2014,
Before Jennifer L. Ward, CSR-3717.



1 an address for her. I always have some reluctance to
2 send things out certified mail, that maybe they won't
3 sign for it, but in this case, as I recall, the judge
4 signed the order on December 23rd, and then I was gone
5 to Florida for a week or so, and I was kind of playing
6 catchup a little bit when I got back, so I did not --
7 she was not served immediately one way or the other,
8 so --

9 Q. Okay. How did you know that Ms. Fields was at
10 Mid-Michigan Center-Gratiot?

11 A. My -- Deborah Brown was there at the hospital visiting
12 someone, she was aware of the case, and she thought
13 she saw Marcia Fields as a patient at the hospital.
14 On January 13th, Lynn Beetley was serving some other
15 papers for me on a land contract forfeiture case, and
16 Debbie called me and wondered if it would be okay to
17 serve her at the hospital because she knew that she
18 was -- was a patient there.

19 Q. And what did you say?

20 A. I said it sounds okay to me, something of that effect,
21 and I don't know if I said to go through, you know,
22 checking in at the desk and that type of thing, I
23 don't know if I got into that with her on what he
24 should do or what he shouldn't do, although my
25 understanding is that he went in the hospital during

1 regular visiting hours, he went to the desk, he
2 identified who he was, that he wanted to serve her,
3 and didn't know what room she was in, and they told
4 him basically what room she was in, and then he went
5 up and served her with the papers.

6 Q. Just out of curiosity, do you know how Deborah Brown
7 knew Ms. Fields by sight?

8 A. She wasn't sure that it was her, but I think she knew
9 her daughter, or had seen her daughter before, and her
10 daughter I believe was there when she was there
11 visiting someone else, that the daughter was there,
12 and Marcia Fields looked like the daughter, and I
13 think -- you could ask her, but I think she just kind
14 of concluded that that might very well be her, and I
15 don't think she knew that for sure, but --

16 Q. Before the PPO was served, did you remember having a
17 telephone conversation with Ms. McNeill-Marks in which
18 she told you that Marcia Fields was at the hospital?

19 A. I was aware that Marcia Fields had approached her at
20 the hospital in violation of the PPO. I did not have
21 any information from her that she was a patient at the
22 hospital, and I -- I cannot tell you what day she
23 would have called. I suppose if she gave a
24 deposition, that's probably the day that she would
25 have called.

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRATIOT

TAMMY MCNEIL-MARKS,
Plaintiff,

-vs-

The Honorable
Randy L. Tahvonen

MIDMICHIGAN MEDICAL
CENTER-GRATIOT,
Defendant.

Case No.
2014-11876-NZ

DEPOSITION OF BRENDA WHITMAN

Taken by the Plaintiff on the 18th day of
September, 2014 at MidMichigan Medical Center, 300 East
Warwick Drive Alma, Michigan at 1:02 p.m.

APPEARANCES:

For the Plaintiff: MR. KEVIN J. KELLY (P74546)
The Mastromarco Firm
1024 North Michigan Avenue
Saginaw, Michigan 48602
(989) 752-1414

For the Defendant: SARAH K. WILLEY, Esq. (P57376)
Miller Johnson
100 West Michigan Avenue, Suite 200
Kalamazoo, Michigan 49007
(269) 226-2957

Also present: Lorie Mault

Reported by: Robin Alvis Doan, CSR 5650
Tri-City Court Reporters, Inc.
(989) 792-4712

TRI-CITY COURT REPORTERS



1 employment?

2 A. Related to?

3 Q. Performance.

4 A. No.

5 Q. Did you create any opinions as to whether she would
6 continue on in her position or not?

7 A. Say that again please.

8 Q. Sure. Did you formulate any opinions as to whether
9 Tammy would continue in her clinical manager position or
10 not?

11 A. I felt like I was giving her every opportunity to
12 improve, so I hadn't made a decision as yet, no.

13 Q. Okay. Do you recall an incident in January of 2014
14 where a patient was served with a personal protection
15 order?

16 A. Yes.

17 Q. And how did you learn of that incident?

18 A. I think it was the shift manager, a supervisor at night
19 who either called or left me a message. He made me
20 aware of that circumstance that happened the previous
21 night and that happened the next morning.

22 Q. Do you know if that was T.J. Sirrine, the shift manager?

23 A. It would have been, I think it was John Norene (ph), the
24 nighttime shift manager.

25 Q. Whoever it was do you remember what information was

1 relayed to you?

2 A. That there was a patient complaint. That the patient
3 felt her, that Tammy had breached HIPAA in some way.
4 That, and made known that she was in the hospital and
5 that the patient was served a PPE order, PPO.

6 Q. Did you ever review the patient complaint?

7 A. I did.

8 Q. I'm going to show you what was marked as Exhibit 2, do
9 you recall if that's the patient complaint that you
10 reviewed?

11 A. Not initially this wasn't, I didn't see this initially
12 no.

13 Q. When you spoke of the patient complaint was it verbal
14 originally?

15 A. It was a verbal complaint to the shift manager that was
16 passed along to me.

17 Q. Okay.

18 A. And I investigated it from, actually the risk management
19 was off, Sue Broudbek was off, our risk manager, so I
20 did go up and talk to the patient.

21 Q. And what do you recall, was that done on the following
22 day?

23 A. Yes.

24 Q. So what do you recall the conversation with the patient
25 being?

1 A. That I heard she had some complaints, I probably didn't
2 use that word and to let her, let me know what had
3 happened. And so she proceeded to tell me that she felt
4 Tammy McNeil-Marks accessed her record somehow
5 electronically is the patient's thought. And that she
6 called her lawyer and had the papers served and the
7 patient was very upset with that.

8 Q. Do you know if anybody else was present during the
9 conversation?

10 A. No one else was present, no.

11 Q. Okay. Did you have any response to --

12 A. I also asked her if she had seen Tammy in the hall and
13 she indicated she had seen Tammy in the hall. I don't,
14 well, before the PPO was served.

15 Q. Why did you ask that question?

16 A. Because I met with Tammy before I met with the
17 patient.

18 Q. When did you -- same day?

19 A. Yes.

20 Q. Let's go to that real quick. So you sat down with
21 Tammy?

22 A. Yes.

23 Q. What do you recall from that conversation?

24 A. Tammy was concerned, she indicated that she had had a
25 PPO against this patient for several years. And that it

1 had expired or sounded like it had expired and they were
2 looking to reinstate that. She shared with me concerns
3 of the patient threatening her through the holidays, at
4 a funeral and I can't remember, but she shared concerns
5 of the patient's threats.

6 And that Tammy had saw her in the hall the day
7 before. The patient was on a gurney or a stretcher in a
8 gown and the patient actually addressed her first, said
9 hi Tammy or something. And, and they shared some brief
10 conversation in the hall and Tammy was concerned and
11 upset with that.

12 That the patient wasn't supposed to talk to her or
13 approach her and she thought there would be trouble.
14 Tammy did tell me that she did call her lawyer. And the
15 lawyer conversation she did indicate that the lawyer had
16 wanted, asked Tammy if he could serve PP -- is it PPO
17 orders, right?

18 Q. Yes.

19 A. And Tammy asked him not to. And so Tammy was surprised
20 that they, they got to the patient I guess, so.

21 Q. And did she, you had mentioned that Tammy had related
22 that the patient was not supposed to approach her?

23 A. Correct.

24 Q. Now, do you have any familiarity with what a PPO is?

25 A. From a layman's, yeah. That there's a protection order

1 and that someone's not supposed to get within so many
2 feet or yards or whatever.

3 Q. Did Tammy express any concern that the patient was
4 violating the PPO?

5 A. That was a concern of her's, uh-huh.

6 Q. And did she say what she had discussed with her
7 attorney?

8 A. She discussed that the patient was violating that PPO
9 and that she was concerned that there would be problems
10 and that, other than that let me think. Mainly that he
11 wasn't supposed to serve the PPO on her.

12 Q. Was there any discussion about whether she provided
13 protected health information to her attorney at that
14 point?

15 A. Say that again.

16 Q. During the meeting, okay, did you and Tammy have any
17 discussion about whether Tammy had provided her attorney
18 any protected health information about the patient?

19 A. Just the fact that the patient was a patient in the
20 hospital.

21 Q. Now, going back to your conversation with Ms. Fields,
22 the patient. You had asked her if she saw Tammy in the
23 hallway prior do you recall anything else from that
24 discussion?

25 A. She acknowledged that she did. That's really all. The

1 emotional or mental trauma?

2 A. In leadership we have all kinds of training for
3 emotional stress related things, so some, I've had some
4 training in that.

5 Q. Have you ever seen situations where or I know some
6 nurses I know in the Saginaw area will, you said you
7 were previously there, will like volunteer to do sexual
8 assault counseling and that kind of thing. Did you ever
9 have any involvement in that?

10 A. Never had any sexual assault training, no.

11 Q. Have you ever known people when they have a traumatic
12 situation in the past even seeing a person can sometimes
13 cause them a good deal of stress and have a severe
14 emotional reaction?

15 A. Sure, absolutely. I deal with customer service
16 complaints very much as a manager over 10 years and
17 have, yes, we've had those instances.

18 Q. And so you didn't, I understand it was just hi Tammy or
19 whatever the conversation was, but understand that that
20 could be very traumatic too?

21 A. Absolutely.

22 Q. Now, after you talked with Mrs. Fields do you know the
23 genesis of this written complaint?

24 A. I think this is her daughter who I actually didn't meet
25 I spoke with her on the phone the following day.

1 loop of things.

2 Q. Did she have any reaction to what you were informing her
3 about?

4 A. Just that it's a serious allegation and we'll have to
5 make sure that we investigate that.

6 Q. And then at that point, it sounded like I might have cut
7 you off in asking questions about Robin, did you talk to
8 anybody else?

9 A. I think Theresa Baily her manager to see what her
10 knowledge of any of this was also.

11 Q. And do you recall any of your conversations with
12 Theresa?

13 A. Theresa indicated that Tammy shared with her that she
14 called her lawyer that day before too, that actually she
15 was involved with it on the 14th. Before I knew
16 anything about it or the patient complaint that she had
17 told Theresa about calling her lawyer.

18 Q. Anything else that you can recall or is that pretty much
19 it?

20 A. That's all.

21 Q. Did you talk to anybody else apart from Theresa and
22 Robin?

23 A. Not that I can think of.

24 Q. And then what, I mean what, in your involvement in this
25 situation what's the next event that happens?

1 A. I passed it off to Sue Broudbek, some of the HIPAA
2 investigation because she's the risk management and she
3 was gone for two or three days during that time, she was
4 sick. So I gave her the information that I found
5 initially.

6 Q. Now, did you do anything, apart from these conversations
7 that you've talked about did you do anything else to try
8 to determine if there was a HIPAA violation such as
9 looking at electronic access records?

10 A. I think at some point we did get or ask for electronic
11 records, yes.

12 Q. I know that happened at some point.

13 A. I don't know when.

14 Q. Okay. That's what was going to be my question.

15 A. I think we would have that day. I mean I really didn't
16 think there was an electronic record breach. I was
17 pretty sure there wasn't, but we would have to do that
18 investigation.

19 Q. So did you report it in person or paper to Sue, I mean
20 how did you share that information?

21 A. I don't think I had written notes for there, so it was
22 more of a complaint. I think by that time we had the
23 written thing and I don't recall how it was shared.

24 Q. Did you have a conversation with her at that time apart
25 from just sharing the information that sounds like you

1 Q. And were you present?

2 A. I was.

3 Q. Was anybody else present?

4 A. I'm not sure if Theresa was present at that one or
5 I know Lisa and Sue and myself and Tammy for sure.

6 Q. And what do you recall from that meeting?

7 A. Sue Broudbek led the meeting and asked a series of
8 questions about Tammy's understanding of HIPAA rules and
9 I think Tammy gave an explanation of what had happened.

10 Q. Do you recall her explanation was it the same as what
11 she had told you initially?

12 A. As I can recall, yes.

13 Q. I mean was there more detail, was there anything added
14 that the, from what you had testified earlier?

15 A. I don't think there was anything different.

16 Q. Okay. Was there any discussion at that time about the
17 PPO?

18 A. Yes.

19 Q. Apart from Tammy maybe mentioning it. I mean did people
20 ask any questions about what is this PPO, what's it for
21 or anything?

22 A. I think Tammy indicated what it was for and that it was
23 outstanding. There wasn't any further discussion than
24 what I already explained.

25 Q. Was there any discussion about Tammy and her attorney

1 Q. And what did you hear?

2 A. At some point and I don't remember when exactly that
3 was, seems like it was even after the discipline. She
4 indicated that the secretary overheard something in the
5 office and then her boyfriend is a server and somehow
6 that happened a complicated way that way.

7 Q. And do you know, did you do any investigation whether
8 that was true or not?

9 A. No I didn't.

10 Q. Why not?

11 A. The HIPAA breach is when she called her attorney and
12 said Ms. Fields is a patient here. That's, she didn't
13 need to do that for caring for our patient or, so it's
14 not necessary information for anybody.

15 Q. At anytime did Tammy admit that she told her attorney
16 that Ms. Fields was a patient?

17 MS. WILLEY: Objection, asked and answered,
18 you asked it three times.

19 A. I think she did, yes.

20 Q. Now, are you doing that based on your deductions from
21 other facts that --

22 A. Based on my notes that say, indicated she should not
23 while she is in the hospital -- tell him that she was a
24 patient here. I don't know specific conversation
25 things, but yes my understanding is that she --

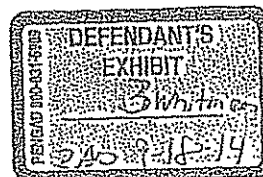
Bailey, Teresa M.

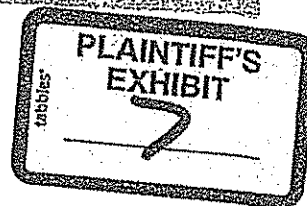
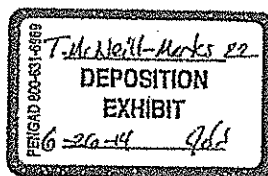
From: Sirrine, Thomas J.
Sent: Monday, January 13, 2014 8:48 PM
To: Bailey, Teresa M.
Subject: FW: PPO orders

From: Sirrine, Thomas J.
Sent: Monday, January 13, 2014 8:26 PM
To: Brodbeck, Sue M.
Cc: Gulick, Matthew L.; Whitman, Brenda K; Whitmore, Robin A.
Subject: PPO orders

The pt up on 2 west in room 2016 was served PPO papers by Tammy Mcneil, I believe she is the 2f manager with Teresa. Pt and the pt's family are very concerned about if the patient has to leave the hospital now, or if they can ever come back once D/C'd. They are also upset with how Tammy found out what room the patient was in they are asking if it is a HIPPA violation. I spoke with the family and told them the patient does not have to leave and that I would get risk management involved to further assist them in this situation. Lisa the CCU nurse is going to fill out a variance report with what she heard. The family and patient are calmed down now and are going to wait to hear from risk management.

T.J. Sirrine
Shift Supervisor
MidMichigan Medical Center-Gratiot
989-466-7912
Thomas.sirrine@midmichigan.org





01/14/14

To whom it may Concern,

I am making this written complaint on behalf of my mother, Marcia A. Fie. She is currently a patient at this facility. I feel my mother's privacy rights or the HIPAA laws were violated on 01/13/14. Marcia was served a PPI by one of the hospital's employees, Tammy McNeil-Marks. While Marcia was being taken from her room, 2014, to have a procedure done Tammy saw my mom in the hallway. Approximately 8pm a gentleman came to Marcia's room and served her the paper. Tammy McNeil-Marks used her knowledge while during her hours of employed duty of my mother being a patient to serve her. My mother's demographic information was released to a person without the "need to know". Whether or not Ms. McNeil-Marks used the hospital database I am not sure of but she had professional knowledge of my mother being a patient at this hospital. Ms. McNeil-Marks releasing that information is a violation. This incident has inflicted emotional and physical distress.

Respectfully,
Plaintiff
T. McNeil-Marks
000000691

Marcia is in ill health and in no condition to have this type of harassing behavior done to her. Not only did this violate her privacy rights, but I feel that Tammy McNeil-Marks used her position for selfish and hurtful reasons.

I thank you for taking the time to look into this matter.

Judith Freese

Judith Freese,
daughter

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRATIOT
TAMMY MCNEIL-MARKS,
Plaintiff,
-vs- The Honorable
Randy L. Tahvonen
MIDMICHIGAN MEDICAL Case No.
CENTER-GRATIOT, 2014-11876-NZ
Defendant.

DEPOSITION OF SUZANNE M. BROUDBECK
Taken by the Plaintiff on the 18th day of
September, 2014 at MidMichigan Medical Center, 300 East
Warwick Drive Alma, Michigan at 2:37 p.m.

APPEARANCES:

For the Plaintiff: MR. KEVIN J. KELLY (P74546)
The Mastromarco Firm
1024 North Michigan Avenue
Saginaw, Michigan 48602
(989) 752-1414
For the Defendant: SARAH K. WILLEY, Esq. (P57376)
Miller Johnson
100 West Michigan Avenue, Suite 200
Kalamazoo, Michigan 49007
(269) 226-2957
Also present: Lorie Mault
Reported by: Robin Alvis Doan, CSR 5650
Tri-City Court Reporters, Inc.
(989) 792-4712



1 Q. Now let's go forward then to the time when you do come
2 back, you said you were out the next week or so?

3 A. Yes.

4 Q. You come back I'm assuming you pick up your
5 investigation as it appears to have already started, is
6 that right?

7 A. Uh-huh, yes.

8 Q. So what do you do next once you get back as part of your
9 investigation?

10 A. I would have, I called for the electronic audit to see
11 if there had been any unauthorized access of the
12 patient's charts, I pulled our policies and procedures
13 to see what they said.

14 I asked for her education, so I knew that she had
15 attended the appropriate education that's given. And
16 then I would have arranged for a time when her
17 supervisor, representative of human resources and myself
18 could meet with Tammy.

19 Q. So let's go through, with the electronic audit --

20 A. Yes.

21 Q. -- was it determined that she had not unauthorized
22 accessed?

23 A. Correct, correct.

24 Q. And at this point before you talked to Tammy did you
25 have an idea of what had transpired based on the other

1 violent?

2 A. If it were not a violent crime against one of my
3 patients or against one of my staff members I would have
4 to have legal review before I would be able to divulge
5 protected health information.

6 Q. Now, if you can report a crime regardless of the
7 severity of the crime, okay. I just want you to assume
8 that for right now and I can pull out the regulation if
9 need be. Did you have any concern about whether she was
10 reporting to her attorney that hey she violated my PPO
11 that might be a crime?

12 A. No.

13 Q. Okay. And did you ever ask why she reported or talked
14 to her attorney?

15 A. The why to me did not matter it was that the protected
16 health information was shared and she violated our
17 policy.

18 Q. Right. But what happens if it falls within an exception
19 to HIPAA, that doesn't matter?

20 MS. WILLEY: Objection, calls for
21 speculation.

22 A. I can't answer that because that's something that is
23 beyond my scope.

24 Q. Did you ever, did you run this situation by legal?

25 MS. WILLEY: Objection, attorney/client

1 privilege.

2 MR. KELLY: Yes it is.

3 MS. WILLEY: Don't answer that one.

4 MR. KELLY: I'll retract the question, my
5 apologies.

6 Q. Did you have any conversations with Tammy about a court
7 proceeding for the PPO?

8 A. No.

9 Q. Did Tammy or did you ever learn that Tammy was scheduled
10 to go to court regarding other violations of the PPO?

11 A. No.

12 Q. Did you ever tell Tammy that she couldn't testify about
13 the protected health information?

14 A. No.

15 Q. Would that be a violation of HIPAA in your opinion as
16 the privacy officer of the policies and procedures for
17 Tammy to testify in open court that Ms. Fields
18 approached her at the hospital?

19 MS. WILLEY: Objection, lack of foundation.
20 If you know the answer you can answer it.

21 A. No, I wouldn't know that answer.

22 Q. Now, after you talked with Tammy did you have further
23 discussion with Lisa and Brenda about the situation?

24 A. I gave them my conclusions.

25 Q. What were your conclusions?

1 A. That protected health information and our policy had
2 been violated because she did disclose that the patient
3 was here at the hospital.

4 Q. Okay. And at anytime, now, when you say that she
5 disclosed protected health information what was the
6 protected health information that was disclosed?

7 A. That the patient was here at the hospital.

8 Q. And do you know what Tammy told her attorney?

9 A. She told him not to serve the PPO, PPO at the
10 hospital.

11 Q. And what is the protected health information?

12 A. It is a violation of our policies and procedures to
13 divulge that someone is a patient here at the hospital.

14 Q. But I could be served with a PPO right now, right, if
15 somebody knew I was here they could walk in here and
16 serve me?

17 A. Yes.

18 Q. And if, let's say you know she says or the court
19 reporter calls up her friend and says don't serve the
20 PPO against Kevin it would be really embarrassing, I'm
21 working right now. That's not protected health
22 information just because I'm in the hospital, right?

23 A. You're correct.

24 Q. So asking someone to serve a PPO at a hospital does not
25 mean that the person who's being served is a patient

1 necessarily does it?

2 A. That's two questions, I'm sorry you have to repeat it
3 for me.

4 Q. Okay. Saying that or making the statement I told him
5 not to serve the PPO while she's at the hospital does
6 not necessarily mean that the person who is going to be
7 served with the PPO is a patient does it?

8 A. That would be a reasonable assumption that they are a
9 patient because otherwise your time here would be very
10 brief and the fact that somebody would have to travel
11 here to serve it would be...

12 Q. Do you know who attorney Richard Gay is?

13 A. Yes I do.

14 Q. His office is pretty close to here isn't it?

15 A. Yes.

16 Q. And it wouldn't be too hard if you found, saw somebody
17 walk in the lobby hey come serve this person they just
18 walked inside?

19 MS. WILLEY: Objection, calls for
20 speculation.

21 A. I wouldn't know where Richard Gay would be in the
22 community at that time.

23 Q. Okay.

24 A. So.

25 Q. So when you say it's a reasonable assumption is it

1 reasonable because you don't know where he would be or
2 what the facts were do you?

3 MS. WILLEY: Objection, argumentative.

4 A. You'll have to repeat the question.

5 Q. Okay. You had testified earlier I believe, just a few
6 moments ago, that it would be a reasonable assumption
7 that it would be a patient?

8 A. Yes.

9 Q. Because they'd have a very brief stay here if they were
10 a visitor?

11 A. Correct.

12 Q. And you said, well, and you just said well I don't know
13 where Mr. Gay would be in the community. And I'm sure
14 that would be true whoever the process server was
15 because, if they could get here in time. It's more
16 reasonable for me to think that she must have been a
17 patient then, right?

18 A. Correct.

19 Q. But if you don't know all the factors about where
20 Mr. Gay was or where the process server was, it depends
21 on the circumstances; right?

22 A. I suppose, yes.

23 Q. And do you know all the circumstances as to how
24 Ms. Fields got served?

25 A. No.

1 Q. Did you ever hear anybody make any comments about
2 Mr. Gay's secretary visiting a patient on 2 West?

3 A. That came up at my interview with Tammy McNeil-Marks;
4 however, she never mentioned that to me in the
5 voicemail or in any other circumstance until that time.

6 Q. What do you recall Tammy telling you about that?

7 A. She stated that a secretary of Mr. Gay's was here in the
8 building, noted that the patient was here and then
9 that's how the process server knew to come here.
10 However that was not congruent to me with what Tammy
11 left on my voicemail the day after the event
12 occurred.

13 Q. What was the inconsistency?

14 A. That she told my lawyer not to serve the PPO, but he did
15 it anyway.

16 Q. Do you know what conversations Mr. Gay had with his
17 secretary?

18 MS. WILLEY: Objection --

19 A. No.

20 MS. WILLEY: Objection, hearsay.

21 A. No.

22 Q. So you don't know if there is an inconsistency or not do
23 you?

24 A. No.

25 Q. So there's nothing in any of the documents that you're

1 aware of that says that Tammy admitted that she told
2 Mr. Gay that Ms. Fields was a patient?

3 MS. WILLEY: Objection --

4 Q. Is there?

5 MS. WILLEY: I'm sorry. Objection, overbroad,
6 calls for speculation. If you want her to refer to
7 documents show her the documents.

8 Q. Based on your interview of Tammy she didn't admit that
9 she told Mr. Gay that Ms. McNeil-Marks was a patient did
10 she?

11 A. You might want to rephrase that.

12 Q. Did she admit or did she say to you that I told Mr. Gay
13 that Marcia Fields was a patient in the hospital?

14 A. No.

15 Q. And so you along with Lisa and Brenda come up with the
16 conclusion that she must have told him that the patient
17 was here because how else would, why else would she say
18 not to serve the PPO here; right?

19 A. I don't understand where you're --

20 Q. If she doesn't say, tell you I told Mr. Gay that
21 Ms. Fields was a patient here you guys reached the
22 conclusion that she must have shared protected health
23 information because she tells him don't serve the PPO
24 while she's here?

25 A. Correct.

1 members. Does that reference the Facebook --

2 A. Yes.

3 Q. -- posting? And so the Facebook posting was dated
4 1/12?

5 A. Yes.

6 Q. Okay.

7 A. However it wasn't printed off until just before the
8 meeting and I noted that.

9 Q. And I do see that you do note it.

10 A. Yes.

11 Q. However if the patient informs the public or anyone who
12 can view her Facebook page on the 12th that she's at the
13 hospital that's no longer private information is it?

14 MS. WILLEY: Objection, lack of foundation.

15 A. I'm sorry you have to repeat the question.

16 Q. I'm going back to the example that I just talked about,
17 right. If somebody --

18 A. Correct.

19 Q. -- starts talking about their protected health
20 information they no longer have the privacy interest in
21 it, right? Because they voluntarily --

22 A. Someone voluntarily disclosed on 1/12 that she was a
23 patient here at the hospital through some posting.

24 Q. Right. And so what I'm, doesn't that mean for HIPAA
25 purposes and policies and procedures that that

1 information is no longer private on 1/12?

2 A. On 1/12 it was not private.

3 Q. Okay. And on 1/13 Tammy calls her attorney and
4 according to you gives the same information that
5 Ms. McNeil-Marks is a patient at the hospital?

6 A. But what she did on 1/13 that made the difference for me
7 was that she confirmed that the patient was still here
8 on 1/13.

9 Q. Oh, okay. So the length of the stay is what we're
10 talking about?

11 A. Yes. And this privacy office or PPO could be then
12 served here at the hospital. She took it, it wasn't --
13 this was a healthcare worker now confirming that someone
14 was still here as a patient at the hospital.

15 Q. So to you the Facebook post didn't really, in the
16 longrun didn't mean anything?

17 A. Especially since it wasn't printed off until much
18 later.

19 Q. Do you use Facebook?

20 A. Yes I do, briefly.

21 Q. And not at work, right?

22 A. You're correct on that one, it would be a violation of
23 one of our policies.

24 MR. KELLY: I was just joking around. I have
25 it on my phone, so I do it all the time.

1/24/14

Meeting commenced with introduction of the attendees present and their roles.

Brenda Whitman DON, Lisa Killey HR, Sue Brodbeck Privacy Officer (PO)

Privacy Officer explained that the meeting had been called because a serious privacy concern had been reported and we needed to speak with Tammy to address the concern. Notes were taken during the meeting by

Question:

Tell me about HIPAA and what would be considered PHI?

Answer:

Pt. chart, medical information

Question:

Tell me about your role in protecting the privacy of patients.

Answer:

Protect private information

Question:

Describe any circumstances where PHI was known to you and may have been shared with others.

I had knowledge of the admission through a face book posting. PO notes produced a posting dated 1/12 which Tammy had indicated was forwarded to her from other family members

Question:

Discuss with me your relationship to Marcia Fields

Answer: Grandmother of 2 of my adoptive kids, has threatened me before

Question:

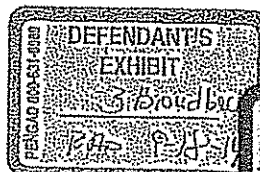
What was your thought process in the event s that ended with the servicing of the Personal Protective Order?

Answer: Tammy initially denied that she informed her attorney of the pt. admission, stating that the lawyer's secretary recognized the pt. and informed the Processor of the office that pt. was at Gratiot. When questioned further Tammy admitted that she had "returned a call to her a lawyer" on 1/13 and asked him to not serve the pt. while she was in the hospital

Question:

Describe any other actions that could have been taken regarding this event.

Answer: Tammy stated she informed her Mgr. Teresa Bailey regarding the PPO violation. Did not readily volunteer any other actions that she could have taken. After continuing the interview, Tammy did



stated that she should have talked with the PO or administration r/t the actions that should have been taken

Observations:

The events as Tammy presented today are different than what was described in the voice mail left on or before 1/14. Tammy did not acknowledge that the conversation she described with her lawyer was also a PHI violation when she described asking him to not serve the pt. while in the hospital. PO educated Tammy that this confirmation of the pt. presence after seeing the pt. in the hallway was considered a HIPAA violation. She was also educated on the difference between a legal action such as a PPO and what can be disclosed under HIPAA. Also shared with Tammy that as a result of the investigation, there was enough indicators to require that a HITECH letter be generated to the pt. on the disclosure that she was admitted to the hospital and a pt. on 1/13.

Privacy Officer Conclusion:

The statements and circumstances of the events indicate that there was a Release of PHI. Based the outcome corrective action is advised. DON and HR to determine the step in the disciplinary process

* Summary of Sue Brodecks
Priv Officer Invest. notes

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRATIOT

TAMMY MCNEIL-MARKS,

Plaintiff,

-vs-

The Honorable
Randy L. Tahvonen

MIDMICHIGAN MEDICAL
CENTER-GRATIOT,

Case No.
2014-11876-WZ

Defendant.

DEPOSITION OF LISA KILLEY

Taken by the Plaintiff on the 18th day of
September, 2014 at MidMichigan Medical Center, 300 East
Warwick Drive Alma, Michigan at 10:00 a.m.

APPEARANCES:

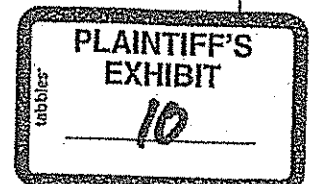
For the Plaintiff: MR. KEVIN J. KELLY (P74546)
The Mastromarco Firm
1024 North Michigan Avenue
Saginaw, Michigan 48602
(989) 752-1414

For the Defendant: SARAH K. WILLEY, Esq. (P57376)
Miller Johnson
100 West Michigan Avenue, Suite 200
Kalamazoo, Michigan 49007
(269) 226-2957

Also present: Lorie Mault

Reported by: Robin Alvis Doan, CSR 5650
Tri-City Court Reporters, Inc.
(989) 792-4712

TRI-CITY COURT REPORTERS



1 Q. And if someone is walking in the hospital doesn't
2 necessarily mean that they're a patient, right?

3 A. Correct.

4 Q. If Ms. McNeil-Marks informed her attorney that she saw
5 Marcia Fields or Marcia Fields approached her at the
6 hospital that doesn't necessarily mean that she provided
7 patient information does it?

8 MS. WILLEY: Objection, calls for
9 speculation.

10 Q. You can still answer over the objection.

11 A. I'm sorry say that again.

12 Q. Okay. If Ms. McNeil-Marks reported to her attorney that
13 Ms. Fields approached her or spoke to her at the
14 hospital that doesn't necessarily mean that Ms. Fields
15 was a patient at the hospital does it?

16 MS. WILLEY: Same objection.

17 A. Possibly.

18 Q. It could or could not?

19 A. Could not, right.

20 Q. Have you read any of the testimony in this matter, other
21 deposition transcripts?

22 A. No, no.

23 Q. It seems like at the meeting with the CEO the decision
24 was formalized to terminate Ms. McNeil's employment?

25 A. Correct.

1 MR. KELLY: And then I'm sorry I don't have a
2 clear copy, I forgot to make copies of this, so I just
3 pulled it from -- can we mark this as Exhibit 3.

4 (Whereupon Plaintiff's Exhibit No. 3 was
5 marked for identification purposes.)

6 Q. Now, as the HR strategic partner I would imagine you'd
7 have some role in preparing the paperwork?

8 A. Correct.

9 Q. Did you author this explanation?

10 A. It was in collaboration with Brenda Whitman the director
11 of nursing.

12 Q. Now, did you have any information about who served this
13 PPO on Ms. Fields?

14 A. No. All I know is a PPO was served --

15 Q. Was --

16 A. -- not by whom.

17 Q. Was there any discussion about, do you know who
18 Richard Gay is?

19 A. No.

20 Q. Was there any discussion about the attorney's secretary
21 being at the hospital later in the, that evening?

22 A. Say that again.

23 Q. Was there any discussion about the attorney's secretary
24 being a visitor at the hospital on January 13, 2014?

25 A. Tammy did mention that, yes. I don't know if it's the

1 secretary, but somebody I think from the -- yeah.

2 Q. Was there any, did Ms. McNeil-Marks provide any
3 explanation that there was someone from her attorney's
4 office visiting another patient on the same floor as
5 Ms. Fields and happened to notice that Ms. Fields was
6 present there?

7 A. Yes.

8 Q. And did she provide any information that the person from
9 the office, the attorney's office that her boyfriend
10 served the PPO?

11 A. I don't know all the facts, but there was a story around
12 that, yes, I mean.

13 Q. You might not recall --

14 A. I can't recall it all, I can't recall the details, but
15 some of that is sounding familiar yes.

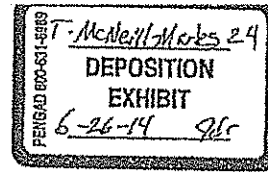
16 Q. Now, do you know during this investigation did anyone
17 speak to the employees that worked with Ms. Fields for
18 whatever room, I see that this hospital has multiple
19 floors so I'm not sure where patients are kept, okay.

20 Was there any discussion with the employees that
21 worked in the area that Ms. Fields was in when she was
22 served with the PPO?

23 A. Not that I'm aware of.

24 Q. Did anyone share information with you that the
25 individual that served the PPO notified the front desk

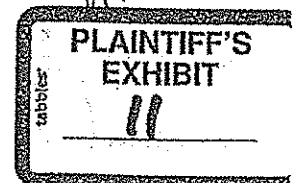
MidMichigan Health



Corrective Action and Disciplinary Form

Employee Name: <u>Tammy McNeil-Marks</u>	Employee # <u>97168</u>
Department: <u>Surgical Services</u>	Job Title: <u>Clinical Manager</u>
Current Action Taken (check level and list date):	
<input type="checkbox"/> Formal Counseling _____	<input type="checkbox"/> Action Plan Period: _____
<input type="checkbox"/> Written Warning _____	<input type="checkbox"/> Suspension Period: _____
	<input checked="" type="checkbox"/> Discharge Effective Date: <u>2/14/2014</u>
Briefly state facts or events leading to the filing of this corrective action and discipline (Include date(s) and work rule(s) violated, including group number (i.e. I, II or III). Attach documentation and list all documents (i.e. brochures, policies, etc.) provided to the employee during this session)	
<p>On 01/24/14 it was found at the conclusion of an investigation, that employee was in violation of policy 301.28 Corrective Action and Disciplinary Procedure & Rules of Conduct Group 2- #1 Violation of patient/resident rights or confidentiality. This occurred on 1/13/14 when employee phoned her attorney and notified him that the respondent of a Personal Protection Order filed by the employee was a patient at the hospital. The patient recognized employee and they spoke in the hallway near OR as the patient was transported to imaging. Employee proceeded to call her attorney and notify him of patient's presence at the hospital. The attorney office proceeded to serve patient with PPO later that night. The patient and daughter were distressed and filed a complaint which was investigated and proven to be consistent with breaching patient privacy. For this severe breach of confidentiality and violations of HIPAA privacy/practices, employee is being discharged effective 2/14/14. Employee was provided with a copy of policy 301.28 Corrective Action and Disciplinary Procedure & Rules of Conduct and policy 112.09 Access to Patient Information.</p> <p><i>Tammy did not access electronic medical record. -BW</i></p>	
Prior Action(s) Taken (check past action(s) over 12 months and date(s)):	
<input type="checkbox"/> No Prior Action Taken _____	<input type="checkbox"/> Action Plan Period: _____
<input checked="" type="checkbox"/> Formal Counseling <u>10/11/2013</u>	<input type="checkbox"/> Suspension Period: _____
<input type="checkbox"/> Written Warning _____	
Corrective/Action Plan (attach additional documentation if necessary):	

Def's Obj + Resp to Plint 1st RFP



This is a serious violation of patient privacy and cannot be tolerated. Since employee has Formal Counseling on 10/11/13, the decision is to discharge effective immediately.

State what consequences will follow for failure to improve to acceptable level:

Is there anything MidMichigan Health can do to help employee solve the problem or follow the corrective action plan? (employee completes section & initials)

Employee is committed to solve the problem? YES NO (circle one)

Employee Comments (Optional):

Union Representation offered if applicable:

Not applicable: X

No-employee refused (employee signature): _____

Yes-employee offered and accepted (union signature): _____

Copy offered to employee? Yes No (circle one)

SIGNATURES

Employee:

Refused to sign / Bluthman

Date: _____

Witness:

Date: _____

Manager or Designee:

Brenda Whitman

Date:

2/14/14

Administrative Review:

Date: _____

Human Resources:

J. A. Kelley

Date:

2/14/14J. A. Kelley2-14-14

Revised 9/12

STATE OF MICHIGAN
COURT OF APPEALS

TAMMY McNEIL-MARKS,

Plaintiff-Appellant,

v

MIDMICHIGAN MEDICAL CENTER-
GRATIOT,

Defendant-Appellee.

FOR PUBLICATION

June 16, 2016

9:00 a.m.

No. 326606

Gratiot Circuit Court

LC No. 14-011876-NZ

Before: SAWYER, P.J., and HOEKSTRA and WILDER, JJ.

WILDER, J.

In this employment matter, plaintiff, Tammy McNeil-Marks, appeals as of right the trial court's order granting summary disposition to defendant, Midmichigan Medical Center-Gratiot (MMCG). We affirm in part, reverse in part, and remand to the trial court for further proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

This case arises out of plaintiff's discharge from her position at MMCG. In 1991, plaintiff was hired as a registered nurse at a different Midmichigan Medical Center, which is located in Midland. She subsequently transferred to the Gratiot location (MMCG), where she began to serve as clinical manager of perioperative services and ambulatory care.

Between 2006 and 2008, plaintiff adopted two children and had a third placed in her custody (collectively the children). Each child has a different father, but the biological mother of all three is Sandi Lee Freeze, who is plaintiff's second cousin. Freeze's mother—the children's grandmother—is Marcia Fields. According to plaintiff, Fields suffers from several psychiatric disorders, including "paranoid schizophrenia, multiple personality disorder," and "bipolar depression." During the adoption process, Fields began to threaten plaintiff. She threatened to kill plaintiff, the children, and plaintiff's biological children. Such threats led plaintiff to seek a personal protection order (PPO) against Fields, which was eventually granted on an ex parte basis.

It is unclear from the record precisely when the initial PPO was issued, but presumably because it had expired, on December 19, 2012, plaintiff, through her legal counsel, Richard Gay, filed a petition again seeking an ex parte PPO against Fields. That same day, a circuit court



judge granted plaintiff's ex parte petition, entering a PPO that prohibited Fields from having any contact with the children and from "posting a message through the use of any medium of communication, including the internet or a computer or any electronic medium, pursuant to MCL 750.411a."

After its entry, Fields allegedly violated the PPO on several occasions by sending electronic messages to plaintiff. When plaintiff contacted local police regarding Fields's purported violations of the PPO, and attempted to file a police report, the police "told [her] that [she] needed to contact [her] attorney, not them [the police]," because the PPO had never been properly entered in the Law Enforcement Information Network (LEIN). On January 14, 2013, the circuit court entered an amended PPO, this time ordering Fields, among other things, to refrain from "stalking" plaintiff, as that term is "defined under MCL 750.411h and MCL 750.411i, which includes but is not limited to" (1) "following or appearing within sight of" plaintiff, (2) appearing at plaintiff's workplace or residence, and (3) "approaching or confronting [plaintiff] in a public place or on private property." The amended PPO explicitly noted that it would "remain[] in effect until 12/31/2013." Ignoring the amended PPO, Fields continued to contact plaintiff.

On December 27, 2013—four days before the expiration date of the amended PPO—plaintiff filed a motion, through Gay, to extend the amended PPO for another year [Motion, part of Exhibit 2 to MSD; part of Exhibit 3 to MMCG's Brief on Appeal]. Later that day, the circuit court granted plaintiff's motion on an ex parte basis. It entered a new PPO, which again ordered Fields to refrain from "stalking" plaintiff, as that term is "defined under MCL 750.411h and MCL 750.411i," and which specified, "This order is effective when signed, enforceable immediately, and remains in effect until 12/31/2014."

While at work roughly two weeks later, on January 13, 2014, plaintiff encountered Fields in a hallway at MMCG. At her deposition, plaintiff described the encounter as follows:

Q. Okay. You were walking down the hallway?

A. I came out of the operating room door. . . . I said "Hello" because you're trained to always speak to people. I didn't even realize who she [Fields] was or who the transporter was that was transporting her. I got three steps down the hallway and [Fields] said, "Hello, Tammy," in one of those little voices she does, and my stomach sank.

Q. She was being transported, in the sense that she was not walking herself?

A. Correct. She was in a wheelchair.

* * *

Q. Do you know what area of the hospital she had been admitted into?

A. No, I do not. Nor did I at that time.

Q. Did you understand that she was inpatient?

A. No, I did not.

Q. You didn't know, or you understood something different than that?

A. No, I had no way of knowing where [Fields] had came from [sic] in the hospital. Those transporters transport from the ER, the tower, all outpatient services, she could have came from [sic] anywhere and be going anywhere.

* * *

Q. After you had passed, [Fields] said, "Hello, Tammy"?

A. Yes.

Q. In whatever voice you had described?

A. A little sing-songy voice she has when she feels she has passed something over on you like a little kid. It's very specific.^[1]

Q. Were any other words exchanged?

A. No. I immediately went into another door.

Q. Do you have any reason to think that she somehow planned that encounter with you, meaning that she knew that you were going to be coming down the hallway in the moment that she was getting wheeled to a procedure?

[Plaintiff's counsel places an objection to foundation on the record, then instructs plaintiff to answer.]

A. I believe on more than one occasion she has admitted herself in the hospital with the hopes that she could . . . make contact with me, yes.

Q. Well, I'm talking about with regard to this particular encounter, and then if you want we can expand on that; okay?

A. Okay.

Q. So with this particular encounter, the two of you had passed each other in the hallway.

¹ Plaintiff later described Fields's vocal tone metaphorically as the tone of "the cat that just ate the canary"—a tone which indicated that Fields knew "she[had] gotten away with something she's not supposed to do."

A. I don't believe that . . . that anybody could necessarily—that wouldn't be a reasonable expectation, that she could plan to pass me in the hallway.

Q. After that encounter in the hallway, did you see her again at [MMCG]?

A. No, I did not.

After encountering Fields, plaintiff immediately went into an employee break room. She was "visibly upset and shaking," so much so that a co-worker voiced concern, asking plaintiff what was wrong. Plaintiff was particularly upset that, through their encounter, Fields had learned "specifically where in the hospital" plaintiff worked. She feared that such knowledge would make Fields a danger to not only plaintiff but also her fellow employees. A short time later, plaintiff called her supervisor, Theresa Baily, who was already aware that plaintiff held a PPO against Fields, and informed Baily about what had transpired.

After speaking with Baily, plaintiff called her attorney, Gay, and told him, "she [Fields] showed up today at my workplace." According to plaintiff, Gay never asked for further explanation about what plaintiff "meant" when she said that Fields "showed up" at MMCG. At no time did plaintiff inform Gay that Fields "was there in any form as a patient," or that Fields had been in a wheelchair. Likewise, plaintiff said nothing to Gay about the possibility of serving Fields, while she was at MMCG, with the latest PPO. Rather, questioning whether it was advisable to serve the PPO, plaintiff instructed Gay "not to serve [Fields] at all[.]" Gay confirmed that, through his conversation with plaintiff he "was aware that [] Fields had approached [plaintiff] at the hospital in violation of the PPO," but he did "not have any information from her [plaintiff] that she [Fields] was a patient at the hospital[.]"

It is undisputed, however, that later that evening, while still a patient at MMCG, Fields was served with the PPO in her hospital room. According to plaintiff and Gay, Fields's service occurred as a matter of happenstance, bearing no causal relationship to the encounter between plaintiff and Fields earlier that day. At the time, Gay's secretary, Deborah Brown, was dating Gay's process-server, Lynn Beetley. Brown was at MMCG visiting another patient when "she thought she saw [] Fields as a patient" there. Brown called Gay, asking whether "it would be okay to serve [Fields] at the hospital," despite the fact that Fields was a patient. Gay responded, "it sounds okay to me[.]" Brown evidently informed Beetley of the opportunity because, according to Gay, Beetley went to MMCG "during regular visiting hours, [] went to the desk," identified himself, asked for and received Fields's room number, then went to her room and served her.

Fields and her family reported the incident to MMCG as a suspected violation of federal privacy regulations, specifically those set forth by the Health Insurance Portability and Accountability Act (HIPAA).² Specifically, Fields alleged that, after encountering Fields at MMCG, plaintiff must have "accessed her record somehow electronically," used such access to obtain Fields's room number, and then informed Gay of Fields's patient status and room number.

² The HIPAA is codified at 29 USC 1181 *et seq.*; 42 USC 300gg; and 42 USC 1320d *et seq.*

An electronic audit later revealed that plaintiff did not improperly access Fields's electronic records.

On January 16, 2014, which was three days after plaintiff encountered Fields at MMCG, Gay filed, on plaintiff's behalf, a motion seeking to have Fields held in contempt for alleged violations of the PPO—not including her encounter with plaintiff at MMCG. A motion hearing was scheduled, but it was subsequently adjourned at Fields's request.

In reaction to Fields's HIPAA complaint, MMCG began an investigation, which involved several staff members, including MMCG's privacy officer, Suzanne Broubeck. During the investigation, plaintiff admitted that she told Gay that Fields was "at the hospital" on January 13, 2014, but she denied ever revealing Fields's patient status to Gay. According to plaintiff, when she explained to Broubeck how Fields had been located and served—without plaintiff divulging Fields's patient status—Broubeck called plaintiff "a liar." Moreover, in the course of the investigation, after learning of the upcoming hearing on plaintiff's motion to hold Fields in contempt for violating the PPO, Broubeck "threatened" that plaintiff would be terminated if she testified at the hearing, as planned, regarding her interaction with Fields at MMCG:

I was told by [] Broubeck that if I even mentioned [] seeing [Fields] in the hallway . . . that would be grounds for being fired. And at that point I was still [] employed at [MMCG].

* * *

I said, "If the judge asks me outright if I saw [Fields], am [I] allowed to answer truthfully?" And [Broubeck] said no, that I am not allowed to answer that, or it would be grounds for termination.

* * *

And she said . . . if you answer those questions you will be fired.

At her deposition, Broubeck categorically denied making such statements or ever discussing the circuit court proceedings with plaintiff.

Following her investigation, Broubeck concluded that plaintiff had violated both the HIPAA and MMCG's privacy policies by disclosing Fields's "protected health information" (PHI) to Gay, specifically by "disclos[ing] that the patient [Fields] was here at the hospital." As a result, plaintiff was terminated on February 14, 2014. The "Corrective Action and Disciplinary Form" that she was given at the time of termination cited plaintiff's telephone conversation with Gay as a "severe breach of confidentiality and violation[] of HIPAA privacy/practices," which was the reason for her discharge.

Several months later, a motion hearing took place regarding plaintiff's motion to hold Fields in contempt for violating the PPO. Fields pleaded guilty to violating the PPO. According to plaintiff, at the hearing, Fields admitted that she "violated the PPO by being present" at MMCG.

II. PROCEDURAL BACKGROUND

Plaintiff instituted this action by filing a two-count complaint against MMCG. She alleged that her termination violated both the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.*, and Michigan public policy, because MMCG terminated her for either reporting Fields's violation of the PPO to Gay, or being about to report that violation to the circuit court. [Complaint, March 10, 2014, LCF.]

Following discovery, MMCG moved for summary disposition under MCR 2.116(C)(10). In support, MMCG argued that plaintiff had failed to establish a *prima facie* case of unlawful retaliation under the WPA because (1) she never reported Fields's alleged violation of the PPO to a "public body" as defined under the WPA, and (2) plaintiff could not have reasonably suspected that Fields's conduct—encountering plaintiff by accident while being transported in a wheelchair—violated the "stalking" prohibition in the PPO. MMCG further argued that, even if plaintiff could state a *prima facie* case under the WPA, she had failed to introduce any evidence that MMCG's stated reason for terminating her—i.e., its conclusion that she had violated HIPAA privacy regulations—was pretextual. With regard to plaintiff's public policy claim, MMCG argued that the WPA preempts any such claim. In any event, MMCG argued, plaintiff had presented no evidence that her termination was based on her refusal to violate the law, or conceal a crime, in contravention of this state's established public policy.

In response, plaintiff argued that (1) under the WPA, Gay qualifies as a member of a "public body" because he is, as an attorney, an officer of the court and therefore a "member or employee of the judiciary," (2) likewise, he qualifies as a member of a "body which is created by state . . . authority," specifically the Michigan Bar Association, (3) as such, plaintiff's telephone conversation with Gay constituted a report to a member of a "public body" of a violation, or suspected violation, of law, (4) plaintiff's activity was also protected under the WPA because, at the time she was terminated, she was "about to report" Fields's conduct to the circuit court, was threatened with termination if she did so, and was subsequently terminated under circumstances from which a reasonable inference of retaliation could be drawn, and (5) the stated reason for plaintiff's termination was pretextual because there is no evidence that plaintiff violated HIPAA by revealing Fields's patient status. Regarding her public policy claim, plaintiff argued that (1) the claim was not preempted by the WPA, (2) she had presented sufficient evidence to create a genuine issue of material fact about whether she was, contrary to Michigan public policy, discharged for refusing to conceal a criminal act, and (3) as with the WPA claim, the stated reason for plaintiff's termination was pretextual.

The trial court ultimately granted MMCG's motion for summary disposition of both claims. The trial court reasoned that plaintiff's telephone conversation with Gay was not "a communication to a public body," further reasoning that, "[a]bsent such a communication, there is no [WPA] claim[.]" The trial court also concluded that, as a matter of law, Fields's conduct at MMCG did not violate the PPO, and that it was unreasonable for plaintiff to suspect that such conduct violated the PPO. Finally, concerning the public policy claim, the trial judge held, "there was, in my judgment, no request by the hospital . . . to conceal or hide the existence of a, quote, crime, close quote, even if that, quote, crime, close quote, was simply the misdemeanor violation of a [PPO]."

III. ANALYSIS

A. STANDARD OF REVIEW

We review de novo “[a] trial court’s decision on a motion for summary disposition.” *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366; 817 NW2d 504 (2012). “A motion for summary disposition under MCR 2.116(C)(10) challenges the factual sufficiency of the complaint, with the trial court considering the entire record in a light most favorable to the nonmoving party.” *LaFontaine Saline, Inc v Chrysler Group, LLC*, 496 Mich 26, 34; 852 NW2d 78 (2014). “The moving party has the initial burden of supporting its position with documentary evidence, but once the moving party meets its burden, the burden shifts to the nonmoving party to establish that a genuine issue of disputed fact exists.” *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). Judgment as a matter of law is appropriate where the evidence demonstrates that no genuine issue of material fact remains. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001) (citation omitted). Circumstantial evidence can be sufficient to establish a genuine issue of material fact, but mere conjecture or speculation is insufficient. *Id.* at 97-98 (citation omitted). We also review de novo, as legal questions, the proper interpretation of the WPA, *Wurtz v Beecher Metro Dist*, 495 Mich 242, 249; 848 NW2d 121 (2014), and issues regarding preemption, *Ter Beek v City of Wyoming*, 495 Mich 1, 8; 846 NW2d 531 (2014).

B. WHISTLEBLOWER CLAIM

Section 2 of the WPA provides:

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action. [MCL 15.362.]

To establish a prima facie case under the above provision, “a plaintiff must show that (1) the plaintiff was engaged in a protected activity as defined by the WPA, (2) the plaintiff was discharged, and (3) a causal connection existed between the protected activity and the discharge.” *Manzo v Petrella*, 261 Mich App 705, 712; 683 NW2d 699 (2004). “‘Protected activity’ under the WPA consists of (1) reporting to a public body a violation of a law, regulation, or rule; (2) being about to report such a violation to a public body; or (3) being asked by a public body to participate in an investigation.” *Chandler v Dowell Schlumberger Inc*, 456 Mich 395, 399; 572 NW2d 210 (1998). An employee asserting the second type of claim—an “about to report” claim—must support that claim with “clear and convincing evidence that he or she or a person acting on his or her behalf was about to report, verbally or in writing, a violation or a suspected violation . . . to a public body.” MCL 15.363; see also *Chandler*, 456 Mich at

400. “The first two types of activity are protected, ‘unless the employee knows that the report is false.’ ” *Truel v City of Dearborn*, 291 Mich App 125, 138; 804 NW2d 744 (2010), quoting MCL 15.362. “In other words, reporting or being about to report violations or suspected violations is protected if the report is or is about to be made *in good faith*.” *Id.* (emphasis added). The “violation” or “suspected violation” at issue need not be one committed by the employer or one of the plaintiff’s co-workers; rather, the scope of the WPA is “broad enough to cover violations of the law by a third person.” *Chandler*, 456 Mich at 404; see also *Kimmelman v Heather Downs Mgt Ltd*, 278 Mich App 569, 575; 753 NW2d 265 (2008) (“There is absolutely nothing, express or implied, in the plain wording of the statute that limits its applicability to violations of law *by the employer* or to investigations *involving the employer*.”).

To establish a prima facie case, a plaintiff can rely on either direct evidence of retaliation or indirect evidence. See *Debano-Griffin v Lake Co*, 493 Mich 167, 176; 828 NW2d 634 (2013), citing *Hazle v Ford Motor Co*, 464 Mich 456, 464; 628 NW2d 515 (2001). “ ‘Direct evidence’ is evidence that, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer’s actions.” *Powers v Post-Newsweek Stations*, 483 Mich 986, 987 n 3; 764 NW2d 564 (2009), citing *Hazle*, 464 Mich at 462. If the plaintiff establishes a prima facie case, a presumption of retaliation arises, which the employer can rebut by offering “a legitimate reason for its action[.]” *Debano-Griffin*, 493 Mich at 176. To avoid summary disposition after the employer offers such a reason, the plaintiff must “show that a reasonable fact-finder could still conclude that the plaintiff’s protected activity was a ‘motivating factor’ for the employer’s adverse action,” i.e., that the employer’s articulated “legitimate reason” was a pretext disguising unlawful animus. *Id.*, quoting *Hazle*, 464 Mich at 465.

A plaintiff can establish that a defendant’s articulated legitimate . . . reasons are pretexts (1) by showing the reasons had no basis in fact, (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if they were factors, by showing that they were jointly insufficient to justify the decision. [*Feick v Monroe Co*, 229 Mich App 335, 343; 582 NW2d 207 (1998).]

The germane inquiry is whether the employer was motivated by retaliatory animus, “not whether the employer is wise, shrewd, prudent, or competent.” *Hazle*, 464 Mich at 476 (quotation marks and citation omitted).

In dismissing plaintiff’s WPA claim, the trial court concluded, *inter alia*, that it was immaterial whether plaintiff made a report regarding Fields’s conduct to a “public body” before she was terminated, or was about to make such a report, because Fields’s conduct did not violate an existing PPO. The trial court further found that plaintiff could not have reasonably believed that Fields’s conduct violated an existing PPO.

By so ruling, the trial court erred. Among other things, the December 27, 2013 PPO ordered Fields to refrain from “stalking” plaintiff, as that term is “defined under MCL 750.411h and MCL 750.411i,” and specified that it was both “effective when signed” and “enforceable immediately[.]”

MCL 600.2950(1)(i) prohibits stalking, which MCL 750.411h(1)(d) defines as “a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.”

“Harassment” is defined in MCL 750.411h(1)(c) as

conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

“Unconsented contact” is defined as

any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(i) Following or appearing within the sight of that individual.

(ii) Approaching or confronting that individual in a public place or on private property.

(iii) Appearing at that individual's workplace or residence.

(iv) Entering onto or remaining on property owned, leased, or occupied by that individual.

(v) Contacting that individual by telephone.

(vi) Sending mail or electronic communications to that individual.

(vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual. (MCL 750.411h(1)(e).)

There must be evidence of two or more acts of unconsented contact that caused the victim to suffer emotional distress and that would cause a reasonable person to suffer emotional distress. MCL 750.411h(1)(a). [*Hayford v Hayford*, 279 Mich App 324, 330; 760 NW2d 503 (2008) (emphasis added).]

It is true that, to constitute stalking, there must be a “*willful* course of conduct[.]” MCL 750.411h(1)(d) (emphasis added). But even if Fields’s initial encounter with plaintiff in the hallway at MMCG was not willful, and was instead accidental, her subsequent verbal *communication* with plaintiff constituted willful, unconsented contact under MCL 750.411h(1)(e); it was “contact with [plaintiff] that [wa]s initiated or continued without [plaintiff’s] consent or in disregard of [her] expressed desire that the contact be avoided or discontinued.” Plaintiff has been granted a series of PPOs against Fields—on an *ex parte* basis—because Fields persists in contacting plaintiff against her wishes, and in such communications Fields has threatened the lives of both plaintiff and her children. Even if Fields could not have planned her contact with plaintiff or avoided such contact, after she saw plaintiff, Fields made a deliberate choice to speak to her, and such deliberation made the communication willful. Moreover, the record establishes that Fields did so in a decidedly willful tone—a tone indicating that she knew “she[had] gotten away with something she’s not supposed to do.” Thus, viewing the evidence in the light most favorable to plaintiff, Fields’s conduct, in concert with her prior unconsented contacts with plaintiff, qualified as “stalking” in violation of the PPO.

Furthermore, even assuming, for the sake of argument, that Fields’s conduct did not *actually* violate the PPO, plaintiff is still afforded the protection of the WPA so long as she, in good faith, reported, or was about to report, Fields’s conduct to a public body as a *suspected* violation of the PPO. See *Truel*, 291 Mich App at 138 (“The first two types of activity are protected, ‘unless the employee knows that the report is false.’ MCL 15.362. In other words, reporting or being about to report violations or suspected violations is protected if the report is or is about to be made in good faith.”). There is no evidence that plaintiff acted in bad faith, i.e. that she did not actually believe that Fields’s conduct violated the PPO. Hence, if plaintiff reported such conduct to a public body, or was about to do so, she was engaged in protected activity under the WPA.

Thus, the crucial inquiry is whether plaintiff reported Fields’s conduct to a public body before she was terminated or was about to do so at the time of termination. The trial court decided that she did not, reasoning that plaintiff’s telephone conversation with Gay was not “a communication to a public body[.]” Plaintiff argues that the trial court’s decision was erroneous because, as a licensed Michigan attorney, Gay qualifies as a member of a “public body” for WPA purposes. We agree.

In *Hoffenblum v Hoffenblum*, 308 Mich App 102, 109-110; 863 NW2d 352 (2014), this Court reiterated certain principles of statutory construction that are germane to our instant analysis:

The primary goal when interpreting a statute is to ascertain and give effect to the Legislature’s intent. The words contained in a statute provide us with the most reliable evidence of the Legislature’s intent. Statutory provisions are not to be read in isolation; rather, context matters, and thus statutory provisions are to be read as a whole. If statutory language is unambiguous, the Legislature is presumed to have intended the plain meaning of the statute. An unambiguous statute must be enforced as written. [Quotation marks, citations, and brackets omitted.]

"If a statute specifically defines a term, the statutory definition is controlling." *City of Holland v Consumers Energy Co*, 308 Mich App 675, 684; 866 NW2d 871 (2015).

The phrase "public body" is statutorily defined by the WPA as "all of the following:"

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.

(ii) An agency, board, commission, council, member, or employee of the legislative branch of state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, a council, school district, special district, or municipal corporation, or a board, department, commission, council, agency, or any member or employee thereof.

(iv) *Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body.*

(v) A law enforcement agency or any member or employee of a law enforcement agency.

(vi) The judiciary and any member or employee of the judiciary. [MCL 15.361(d) (emphasis added).]

It is undisputed that Gay was a licensed Michigan attorney, and a member in good standing of the Michigan Bar Association (MBA), when plaintiff called him and reported her contact with Fields. Indeed, as a practicing attorney, Gay's licensure and active membership in the MBA were both mandatory. See MCL 600.916(1); see also *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 49; 672 NW2d 884 (2003) ("A person engaged in the practice of law in Michigan must be an active member of the State Bar."), quoting State Bar Rule 3. Moreover, under MCL 600.901,

The state bar of Michigan is a public body corporate, the membership of which consists of all persons who are now and hereafter licensed to practice law in this state. The members of the state bar of Michigan are officers of the courts of this state, and have the exclusive right to designate themselves as "attorneys and counselors," or "attorneys at law," or "lawyers." No person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto.

And under MCL 600.904, our Supreme Court is empowered "to provide for the organization, government, and membership of the [MBA], and to adopt rules and regulations concerning the conduct and activities of the [MBA] and its members," including "the schedule of membership dues therein[.]"

Hence, under the plain language of the WPA, specifically MCL 15.361(d)(iv), Gay qualified as a member of a “public body” for WPA purposes. As a practicing attorney and member of the MBA, Gay was a member of a body “created by” state authority, which, through the regulation of our Supreme Court, is also “primarily funded by or through” state authority.³ By holding otherwise, the trial court erred. It further erred by concluding that a report to a public body is a necessary prerequisite to establish a prima facie case under the WPA. A report to a public body is only one of the three types of “protected activity” under the WPA. *Chandler*, 456 Mich at 399.

Having reviewed the record evidence in the light most favorable to plaintiff, we conclude that she presented sufficient evidence to establish a prima facie case under the WPA. As we have already discussed, her report to Gay was a report to a member of a public body, and therefore it was protected activity under the WPA, which satisfies the first element for a prima facie case. Moreover, the second element is satisfied by the fact that plaintiff was discharged. Finally, plaintiff has presented direct evidence supporting the third element—i.e., a causal connection between the discharge and the report to Gay—specifically the “Corrective Action and Disciplinary Form,” which explicitly cites plaintiff’s telephone conversation with Gay as a factor motivating MMCG’s discharge decision. Given such direct evidence of unlawful retaliation, plaintiff is not required to proceed under the *McDonnell Douglas*⁴ framework. See *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 539-540; 620 NW2d 836 (2001) (“Where direct evidence is offered to prove discrimination, a plaintiff is not required to establish a prima facie case within the *McDonnell Douglas* framework, and the case should proceed as an ordinary civil matter.”) (quotation marks, citation, and footnote omitted). Likewise, the direct evidence presented by plaintiff is sufficient to survive summary disposition despite the legitimate reason MMCG offers for its action—that it suspected plaintiff of violating the HIPAA by disclosing Fields’s patient status. Given the record evidence, even if HIPAA concerns were *part* of MMCG’s ultimate decision, “a reasonable fact-finder could still conclude that [] plaintiff’s protected activity was a ‘motivating factor’ for [MMCG]’s adverse action.” See *Debano-Griffin*, 493 Mich at 176, quoting *Hazle*, 464 Mich at 465.

Therefore, regarding plaintiff’s WPA claim, the trial court erred by granting summary disposition to MMCG under MCR 2.116(C)(10). A genuine issue of material fact remains about whether plaintiff’s report of Fields’s conduct to Gay was a motivating factor in MMCG’s decision to terminate plaintiff.

³ Having concluded that Gay was a member of a public body as defined under MCL 15.361(d)(iv), we need not consider plaintiff’s alternative argument that, as a licensed attorney and officer of the court, Gay also qualified as a “member or employee of the judiciary” under MCL 15.361(d)(vi).

⁴ *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973).

C. PUBLIC POLICY CLAIM

“[T]he remedies provided by the WPA are exclusive and not cumulative.” *Landin v Healthsource Saginaw, Inc.*, 305 Mich App 519, 532; 854 NW2d 152 (2014). Thus, when a plaintiff alleges discharge in retaliation for engaging in activity protected by the WPA, “[t]he WPA provides the exclusive remedy for such retaliatory discharge and consequently preempts common-law public-policy claims arising from the same activity.” *Anzaldúa v Neogen Corp.*, 292 Mich App 626, 631; 808 NW2d 804 (2011).

Plaintiff alleges that she was discharged for reporting a violation of the law, or being about to report such a violation, to a public body or a member of such a body. Both activities constitute protected activity under the WPA. *Chandler*, 456 Mich at 399. And contrary to plaintiff’s argument on appeal, her public policy claim arises out of the “same activity” as the WPA claim for preemption purposes. Plaintiff argues that, aside from discharging her for reporting Fields’s conduct to Gay, and for being about to report that conduct to the trial court, MMCG also discharged her for refusing to conceal Fields’s violation of the PPO. Plaintiff further argues that her refusal to *conceal* the violation is different than the affirmative act of reporting it or being about to report it. But plaintiff’s refusal to conceal the violation was effectuated by her report to Gay, and there is no record evidence that plaintiff was instructed to conceal such activity before her telephone conversation with Gay.

Under the circumstances, we see no logical distinction between the refusal to conceal and the report by which that refusal manifested itself; rather, the two are flip sides of the same coin. Because plaintiff’s public policy claim arises out of the same activity as her WPA claim, the trial court properly concluded that the former claim preempts the latter. Thus, summary disposition of the public policy claim was appropriately granted.

IV. CONCLUSION

We affirm the trial court’s ruling regarding plaintiff’s public policy claim, reverse its summary dismissal of the WPA claim, and remand this matter to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction. Each having prevailed in part, the parties may not tax costs under MCR 7.219.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Joel P. Hoekstra

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TO ATTORNEYS OF RECORD:

Enclosed with this letter is the decision and opinion in the entitled matter. Under MCR 7.215(E), this opinion is the judgment of the Court of Appeals. The official date of the filing of this opinion is the date that is printed on it, and all time periods for further action under the rules will run from that date. See MCR 7.215(F) and (I), and MCR 7.302(C)(2)(b).

If the words *For Publication* appear on the face of this opinion, it will be published in the Michigan Appeals Reports. If the word *Unpublished* appears on the face of this opinion, it was not slated for publication at the time it was released. See MCR 7.215(A).

Although an opinion that is to be published is official as of the date that is printed on it, actual publication will be delayed until editorial work is completed in the Reporter's Office. This editorial work may result in slight changes in style or in citations when the opinion is published in the Michigan Appeals Reports.

I hereby certify that the annexed is a true and correct copy of the opinion filed in the record of the Court of Appeals in the entitled matter and that the date printed thereon is the actual date of filing.

Very truly yours,

Jerome W. Zimmer Jr.
Chief Clerk

JWZ/las
Encl.
cc: Trial Judge or Agency

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